STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

SFWMD Case No. 2009-178 DAO

IN THE MATTER OF:

Petition for Administrative Hearing filed by the Miccosukee Tribe of Indians of Florida for Sale and Purchase Agreement between United States Sugar Corporation, SBG Farms, Inc., and Southern Gardens Groves Corporation and the South Florida Water Management District.

and

IN THE MATTER OF:

Petition for Administrative Hearing filed by New Hope Sugar Company and Okeelanta Corporation re: Agreement for Sale and Purchase between United States Sugar Corporation, SBG Farms, Inc., and Southern Gardens Groves Corporation and the South Florida Water Management District.

ORDER CONSOLIDATING PETITIONS FOR ADMINISTRATIVE HEARING AND DISMISSING THEM WITH PREJUDICE

The Governing Board of the South Florida Water Management District ("District" or "SFWMD"), or its assigned designee, being otherwise fully informed, issues this order consolidating the petitions for administrative hearings filed by (1) the Miccosukee Tribe of Indians of Florida ("Tribe"), and (2) New Hope Sugar Company and Okeelanta Corporation (collectively "New Hope") on June 3, 2009, and dismissing them with prejudice. Copies of the petitions are attached as Exhibits A and B.

Pursuant to Rule 28-106.108, Florida Administrative Code, the District concludes there is good cause for consolidating these separate matters because they stem from the same agency action; because they involve many common issues of fact and law; and because consolidation would promote the just, speedy, and inexpensive resolution of these matters without unduly prejudicing the rights of a party.

The petitions are dismissed with prejudice for the reasons set forth below.

FINDINGS OF FACT

1. The Tribe alleges that it owns real property within the boundaries of the District and that its members reside, work, and depend on the Everglades for their culture and way of life, including lands the Tribe owns, leases, or controls within the Everglades, such as Everglades National Park and Water Conservation Area 3A ("WCA 3A"). Although the Tribe alleges that it "is an owner of property and a holder of land, which is taxable outside its federally designated lands, within the jurisdiction of the South Florida Water Management District," it does not claim to be a taxpayer and the District will not assume that it is. *See, e.g.*, Public Law 97-399 (RR 7155) (December 31, 1982) (federal statute expressly exempting the Tribe's leasehold interest in WCA-3A from state and local taxes).

2. New Hope alleges that it owns and farms a significant portion of land located in the Everglades Agricultural Area ("EAA"). New Hope pays the District *ad valorem* and agricultural privilege taxes (pursuant to Section 373.4592(6), Florida Statutes).

3. This is the Tribe's and New Hope's third attempt to seek an administrative hearing that would prevent the District from purchasing more than 180,000 acres of farmland owned by United States Sugar Corporation, SBG Farms, Inc., and Southern Gardens Groves Corporation (collectively "USSC"). The USSC farmland is located in the EAA, and the adjoining C-139, S-4, and L-8 basins and, as acknowledged by the Tribe and New Hope, is being purchased by the District as part of its on-going efforts to restore the Everglades.

4. The purchase of the USSC farmland would create a unique opportunity to enhance Everglades restoration that does not presently exist, i.e., additional land allows for the construction of new water storage and stormwater treatment areas ("STAs") that can improve the delivery of water to the Everglades. Given Florida's topography, the EAA is a highly desirable place to locate and build such facilities. Significantly, the purchase of farmland for use as a restoration project has the added benefit of taking agricultural farmland out of production (along with its associated fertilizers and pesticides).

5. On December 16, 2008, the District's Governing Board approved an Agreement for Sale and Purchase, with an incorporated Lease Agreement (the "USSC Land Acquisition Contract"), entered into between the District and USSC. The Tribe and New Hope subsequently filed petitions for administrative hearing objecting to the purchase. The District subsequently dismissed both petitions with leave to amend and the Tribe and New Hope served amended petitions. The amended petitions were dismissed

with prejudice and both parties have appealed the orders of dismissal. The Tribe has appealed its order to the Third District Court of Appeal, Case No. 3D09-845. New Hope appealed its order to the Fourth District Court of Appeal, Case No. 4D09-1282. Both appeals are still pending.

6. On May 13, 2009, the District and USSC entered into an Amended and Restated Agreement for Sale and Purchase ("Amended Agreement") for the USSC farmland. Under the Amended Agreement, the District agreed to purchase the farmland in two phases. First, it will acquire 72,813 acres for $536 million. Second, pursuant to an option clause, the District may purchase the remaining 107.817 acres at anytime within the first ten years after closing. Pursuant to the incorporated Lease Agreement, the District will lease the farmland back to USSC for $150 per acre for continued use in sugar cane production. The purchase price for the option lands if exercised during the first three years after closing is $7,400 per acre. The purchase price thereafter will be based on appraised market value at the time the option is exercised, but no less than $7,400 per acre. The Amended Agreement further provides that the original agreement "shall be deemed to be completely amended, restated, replaced and superseded" by the terms of the Amended Agreement.

7. On June 3, 2009, the Tribe and New Hope filed petitions for administrative hearing directed at the Amended Agreement. Copies of both petitions are attached as Exhibits A and B.

8. As it did in its earlier petitions, the Tribe contends that the cost of purchasing the USSC farmland is so prohibitive that *if* the District proceeds with the transaction, it will be forced to eliminate or delay other planned Everglades restoration projects, (including projects described in the Comprehensive Everglades Restoration Plan ("CERP"), the Everglades Forever Act ("EFA"), Section 373.4592, Florida Statutes, and the District's *Long-Term Plan for Achieving Water Quality Standards* ("Long-Term Plan")). The elimination or postponement of these new projects, the Tribe contends, will "adversely affect the Tribe's recognized interests, including its interests in the Everglades and perpetual lease lands in WCA 3A." Exhibit A at ¶ 24. The Tribe further claims that the Amended Agreement is not for a valid public purpose within the scope of Section 373.139, Florida Statutes, and runs afoul of the procedural requirements found in Sections 373.0831, .093, .139 and .1391(1)(c), and .584, Florida Statutes.

9. New Hope's petition also tracks the arguments it raised in its earlier petitions for administrative hearing. Like the Tribe, New Hope claims that the USSC transaction is a waste of money, does not fulfill a valid public purpose, and, due to its prohibitive cost, will cause important Everglades restoration projects to be delayed or terminated. New Hope further asserts, however, that the future abandonment of restoration projects by the District will cause the District to fall out of compliance with the District's discharge permits (as well as the Everglades Forever Act and the Consent Decree entered in the case styled *United States v. South Florida Water Management District, et al.* Case No. 88-1886-Civ-Moreno), which, in turn, will "adversely affect" the

District's ability to provide flood control and water supply services to New Hope's farms in the EAA.[1] Also like the Tribe, New Hope further claims that the Amended Agreement runs afoul of the procedural requirements found in Sections 373.0831, .093, .139, and .1391(1)(c), Florida Statutes

CONCLUSIONS OF LAW

10. Sections 120.569 and .57, Florida Statutes, generally provide that a party whose substantial interests are determined by an agency may request an administrative hearing. In *Agrico Chem. Co. v. Dep't. of Envt'l. Reg.*, 406 So. 2d 478 (Fla. 2d DCA 1981), the court defined "substantial interests" in the context of a Chapter 120 proceeding, stating:

> Before one can be considered to have a substantial interest in the outcome of the proceeding he must show 1) that he will suffer an injury in fact which is of sufficient immediacy to entitle him to a section 120.57 hearing, and 2) that his substantial injury is of a type or nature which the proceeding is designed to protect.

Id. at 482; *see also, City of Sunrise v. South Florida Water Management District*, 615 So. 2d 746 (Fla. 4th DCA 1993).

11. As discussed below, the Tribe and New Hope fail to satisfy both prongs of *Agrico's* standing test. Not only are the Petitioners' claims dependent upon future events

[1] Contrary to New Hope's allegations, neither the State's phosphorus water quality standard, Rule 62-302.540, F.A.C., or the District's *Long-Term Plan for Achieving Water Quality Standards* ("Long-Term Plan"), mandate implementation of water quality projects. Rather, the EFA mandates implementation of the projects set forth in the Long-Term Plan. *See, e.g.*, Fla. Stat. § 373.4592(3)(b) and (e). The EFA also contemplates future amendments to the Long-Term Plan based on an adaptive management approach. Fla. Stat. 373.4592 (3)(b). Revisions to the Long-Term Plan shall be approved by the Florida Department of Environmental Protection. *Id.*.

(thereby rendering them not sufficiently "immediate" under *Agrico*), but they relate to future budgetary decisions by the District, i.e., to fund one particular restoration project as opposed to another, and, as such, are not of a type that Chapter 120 proceedings are designed to protect.

A. Petitioners fail to allege material facts demonstrating a sufficiently "immediate" injury.

12. Neither the Tribe nor New Hope allege to have suffered an actual injury in fact. There are no allegations of monies having been misspent by the District or farm fields being flooded. Nor do they claim that the District is illegally discharging polluted water, or that existing water treatment and storage facilities have been turned off and dismantled, or that water quality standards have been violated. Instead, both Petitioners complain about anticipated *future* harms to be experienced if and when the District buys the USSC farmlands and ultimately decides (according to Petitioners) to not fund the future construction of certain Everglades restoration projects contemplated by the EFA and CERP.

13. Signing the Amended Agreement, however, does not, by itself, result in the future wrongs complained of by the Tribe and New Hope. Rather, many subsequent contingent events have to take place. First, the District has to secure outside funding for the purchase—a process that entails obtaining bond validation in Palm Beach County Circuit Court and then having its underwriters successfully issue certificates of participation "upon terms, conditions and interest rates acceptable" to the District. Next, the transaction has to close—an event that may not take place given USSC's obligation to

"go shop" the contract to interested third parties. Third, the Everglades restoration projects that the Petitioners claim the District will not fund will have to remain in the *Long-Term Plan* (otherwise, the District would not be required under the EFA to implement them). Fourth, the District's Governing Board will have to make a series of financial decisions that places it in a position so that it cannot fulfill its Everglades restoration commitments under the EFA and CERP. Stated differently, the Governing Board would have to decide to proceed with the USSC purchase even though it knew that it jeopardized other Everglades restoration projects and even though the contract gave it the right to walk away from the deal. Fifth, with regard to Everglades restoration projects that are also a part of CERP (such as the EAA Reservoir), Congress would have to abandon its prior commitment to fund their construction. *See e.g.*, Section 601(e)(1) of WRDA 2000 (federal share of carrying out projects shall be fifty percent). Finally, with regard to New Hope's fears of losing flood control and water supply services from the District, a court would have to order the District to turn off its pumps due to water quality violations, and do so knowing that it would result in loss of property and, possibly, human safety. *Cf., Miccosukee Tribe of Indians v. South Florida Water Management Dist.*, 280 F.3d 1364, 1369–71 (11th Cir. 2002) (trial court abused its discretion in ordering District to turn off its pumps as remedy for violation of Clean Water Act).

14. The contingent nature of the Petitioners' claims make them speculative and do not give rise to a sufficiently immediate injury under *Agrico's* first prong. The District's execution of the Amended Agreement is not the same thing as it issuing a

permit to fill wetlands or withdraw groundwater. In the case of a permit, its mere issuance creates legal rights, i.e. to dredge wetlands (potentially in violation of the Clean Water Act) or to pump water from an aquifer (to the detriment of the rights of adjoining property owners who share that aquifer). Executing the Amended Agreement, on the other hand, does not, by itself, give the District the right to anything—other than to purchase the USSC farmland. (Indeed, under the terms of the Amended Agreement, which includes only an *option* to purchase, any alleged injury is even more speculative.) Rather, the Tribe's and New Hope's alleged injuries remain inchoate and mature only if in the future the District implements the contract's provisions in a manner that leads it to violate the EFA .

15. In a series of post-*Agrico* decisions, the First District elaborates on the "immediacy" requirement of its standing test. In *Village Park Mobile Home Assoc., Inc. v. Dept. of Business Reg., Div. of Fla. Land Sales*, 506 So. 2d 426 (Fla. 1st DCA 1987), the First District recast the test to underscore its temporal component: "[A] petitioner can satisfy the injury-in-fact standard set forth in *Agrico* by demonstrating in his petition either: (1) that he had sustained actual injury in fact at the time of filing his petition; or (2) that he is *immediately in danger* of sustaining some direct injury as a result of the challenged agency's action." *Id.* at 433 (emphasis supplied).

16. In *Village Park*, mobile home owners sought to challenge a decision of the Division of Land Sales approving a prospectus submitted by the mobile home park owner, claiming that the prospectus would prevent future sales of their parcels and,

thereby, affect their value. According to the home owners, they were in threat of being immediately injured because the prospectus greatly increased the cost of residing in the park and reduced services previously provided. Petitioners further claimed that the prospectus would directly affect the resale value and marketability of the mobile homes by making park occupancy more expensive and less attractive to buyers.

17. The First District concluded that the home owners had not demonstrated a sufficiently immediate injury. The prospectus, the Court pointed out, was a disclosure document. "The purpose of the prospectus is to disclose to prospective lessees certain information regarding the *future* operation of the mobile home park," such as how rents will be raised and what costs may be charged to homeowners. *Id.* at 433 (emphasis added).

> All of this indicates that the *approval* of the prospectus does not automatically result in the increase of rents, reduction in services, or changes in park rules or regulations. Rather, it is the *implementation* of the provisions of the prospectus by the park owner which may result in a rent increase, reduction in services, or a change in park rules. Thus, in the event that any harm is suffered, it will result from the *implementation* of the provisions contained in the prospectus and not from agency approval of the prospectus.

Id. (emphasis in original). The court also pointed out that if and when the park owner actually implemented a rent increase, the park's lessees may mediate and/or arbitrate the increase pursuant to Section 723.037, Florida Statutes. "[T]he prospect of any injury to the appellants rests on the likelihood that the park owner will implement the provisions of the prospectus and that any rental increases, reduction in services, or change in park rules will survive the mediation/arbitration process of the Mobile Home Act. *Attempting to*

anticipate whether and when these events will transpire takes us into the area of speculation and conjecture." *Id.* at 434 (emphasis supplied); *see also, Ameristeel Corp. v. Clark*, 691 So. 2d 473, 477 (Fla. 1997) (claim that agency action would result in increased operating costs and, thereby, threaten future viability of petitioner's factory, is not an injury of sufficient immediacy) (*citing, Village Park, supra; International Jai-Alai Players Ass'n v. Florida Pari-Mutuel Comm'n*, 561 So. 2d 1224, 1225-26 (Fla. 3d DCA 1990) (same); and *Florida Soc'y of Ophthalmology v. State Board of Optometry*, 522 So. 2d 1279, 1285 (Fla. 1st DCA 1988) (same)).

18. Shortly after deciding *Village Park*, the First District addressed the immediacy requirement in *Boca Raton Mausoleum, Inc. v. Dept. of Banking and Finance*, 511 So. 2d 1060 (Fla. 1st DCA 1987). There, Boca Raton Mausoleum challenged a license issued to a competitor to operate a cemetery. According to Boca Raton Mausoleum, if the license was issued, it would suffer reduced sales which, in turn, would result in it having less money to permanently maintain and care for its existing facility. *Id.* at 1062 and n. 3.

19. In concluding that Boca Raton Mausoleum had alleged an immediate injury, the First District distinguished its prior decisions in *Fla. Dept. of Offender Rehabilitation v. Jerry*, 353 So. 2d 1230 (Fla. 1st DCA 1978), and *Village Park, supra*. In *Jerry*, the court had rejected a prisoner's challenge to a new disciplinary rule that could adversely affect his future gain time. The disciplinary rule, as the court observed, would only apply if the prisoner got himself into trouble in the future. In concluding there was

no immediate injury, the *Jerry* court said: "We will not presume that Jerry, having once committed an assault, will do so again. To so presume would result only in illusory speculation which is hardly supportive of issues of 'sufficient immediacy and reality' necessary to confer standing." 353 So. 2d at 1236.

20. The *Boca Raton Mausoleum* court distinguished *Jerry*, explaining that there was no intermediate "contingency factor" between the complained of agency action and the resulting injury in fact:

> In the instant case, it is the agency action itself which will cause the injury. There is no contingency factor alleged or apparent as in *Jerry*. Mausoleum has alleged that if the permit to operate a competing cemetery is granted, it *will* suffer a loss of sales and a reduction in its perpetual fund. This loss is not dependent upon any intervening factors.

511 So. 2d at 1063 (emphasis in original).

21. The *Boca Raton Mausoleum* court used the same analysis and language when distinguishing *Village Park* as it did when distinguishing *Jerry*:

> [T]he prospectus merely disclosed the method by which rents and costs could be raised in the future and had no substantive effect on rents or services. . . . In *Village Park*, it would be speculative as to whether the landlord would actually raise rental fees. In that case, as in *Jerry*, the injury was contingent upon action of a third party.

511 So. 2d at 1063.

22. As discussed *supra*, a series of events have to take place before the wrongs complained of by the Tribe and New Hope materialize. *See, supra* at ¶¶ 13–14. Consistent with the holdings in *Village Park, Boca Raton Mausoleum,* and *Jerry* (as well as the authorities relied upon in those decisions, including the Florida Supreme Court's

analysis of future injuries in *Ameristeel*), the Petitioners fails to demonstrate that they are "in immediate danger of sustaining some direct injury." *Village Park* at 434. To paraphrase *Boca Raton Mausoleum*, the District's "agency action," i.e., its May 13, 2009, approval of the Amended Agreement, will not adversely affect the Tribe's interests in the Everglades and WCA-3, nor cause water shortages or flooding in the EAA. Rather, their injuries are contingent upon a series of future events taking place.

23. It does not follow that the District's execution of the Amended Agreement must, by itself, cause the termination of Everglades restoration projects and harm the Tribe's and New Hope's interests. For example, the United States Army Corps of Engineers shares in the responsibility of implementing CERP. Yet, neither Petitioner alleges that Congress will refuse to honor its funding commitments to build Everglades and Lake Okeechobee CERP projects, nor should such a refusal be assumed. Similarly, the Petitioners' arguments are contingent on the District not pursuing alternative funding mechanisms. For example, the District could sell existing surplus lands. In that regard, while the Amended Agreement requires the District to purchase all of USSC's 180,000 acres of farmland, nothing precludes it from subsequently selling portions of that land to third parties, thereby allowing it to recoup millions of dollars of its purchase price.

24. Both the Tribe and New Hope allege that the District has already cancelled one restoration project as a result of the Amended Agreement—the on-going Everglades Agricultural Area Reservoir. This claim, assuming it to be true, only serves to show the disconnect between the Petitioners' complained of injuries and the District's execution of

the agreement. If the District terminated the EAA reservoir project, either due to the pendency of the USSC land purchase or for any other reason, then the Tribe's and New Hope's alleged injuries have already happened (and, for that matter, their points of entry for challenging that decision have matured). It is the decision to not build Everglades projects that caused (or will cause) Petitioners' complained of injuries, not the District's execution of the USSC Amended Agreement or changes made to its budget. If, and when, the District elects to violate the EFA by not building a required project, then the Tribe and New Hope may be able to sue the District to compel it to build them. *See* § 403.412, Fla. Stat. But, as the *Jerry* court put it, one should not presume that the District will intentionally violate the EFA in the future because that is illusory speculation.[2]

25. Three other decisions addressing *Agrico's* immediacy requirement are worth noting. In *Florida Sugar Cane League, Inc. v. South Florida Water Management District*, 617 So. 2d 1065, 1066–67 (Fla. 4th DCA 1993), farmers in the EAA challenged a proposed settlement agreement entered into between the District and the United States. That agreement would obligate the District to construct water resource projects in the EAA and implement rulemaking to require EAA farmers to implement agricultural best management practices. The Fourth District recognized there, as in this case, that the District's decision to enter into a settlement agreement did not create a point of entry under Chapter 120. Rather, if, and when, the District sought to honor its obligations

[2] As noted earlier and as acknowledged by the Petitioners, the reservoir is a CERP project that the State decided to accelerate its construction. The Petitioners do not allege, nor should one presume, that the Army Corps will not fulfill its construction obligations under WRDA 2000.

under the settlement agreement through rulemaking and other regulatory powers, then the farmers would be entitled to an administrative hearing pursuant to Section 120.57, Florida Statutes.

26. In *City of Sunrise v. South Florida Water Management District,* 615 So. 2d 746 (Fla. 4th DCA 1993), the City of Sunrise challenged a consumptive use permit issued by the District to a public water supply district servicing the City of Weston. Because Sunrise currently provided potable water to Weston, it contended that the new permit would result in a duplication of facilities causing it to suffer financial losses. The Fourth District held that Sunrise's losses did not satisfy the immediacy requirement under Chapter 120. 615 So. 2d at 747-78; *See also Seacoast Utility Authority v. PGA Nat'l Golf Club,* DOAH Case No. 94-2903, 1995 WL 1052594 (Feb. 6, 1995), at ¶ 46 (utility did not have standing to challenge issuance of water withdrawal permit to one of its customers).

27. Finally, in *Friends of Matanzas, Inc. v. Dept. Env. Protection*, 729 So. 2d 437 (Fla. 5th DCA 1999), an environmental group contested a permit to construct new water and sewer lines, claiming that its members might have to pay increased utility fees to maintain the pipelines and that pipelines would cause or facilitate additional development in areas containing wetlands. 729 So. 2d at 439-440. The First District rejected both arguments as speculative.

> [T]his court cannot provide a remedy where the Legislature has failed to do so. Matanzas will have an opportunity to challenge any development which may violate the County's comprehensive plan, and if the County seeks to alter its plan, it may oppose those measures. However, at this

> point we do not think Matanzas has sufficiently identified how the issuance of the challenged permits will have an immediate adverse effect on its members' interests sufficient to justify a formal administrative hearing by DEP.

729 So. 2d at 440.

28. The last three decisions serve to again underscore the temporal element to *Agrico's* injury in fact requirement, i.e., that a petitioner must allege facts demonstrating that he "is in *immediate danger* of sustaining some direct injury as a result of the challenged agency's action." *Village Park*, 506 So. 2d at 433; *see also Ameristeel*, 691 So. 2d at 477-78. As discussed in those cases, when alleged injuries are dependent on future events that will not happen in the *immediate* future—such as injuries stemming from new BMP rules, lost sales, and future development (or, as in the case of the Petitioners' claims, the termination of Everglades projects)—the nexus between the complained of injury and the agency action becomes remote and speculative. This remoteness, in turn, makes resolution of factual disputes concerning the cause of the future injury extremely problematic. For example, in *Florida Sugar Cane*, the harm to farmers stemming from new BMPs might result from the District's execution of the Settlement Agreement, or they could be independently caused by changes in Florida law, e.g. such as adoption of the EFA that mandated BMPs. The City of Sunrise's future revenues might decrease as a result of Weston's consumptive use permit—or they could go down because of one or more other reasons, such as a decrease in population. The pipelines to St. Johns County may cause undesirable development, but so, too, could a new factory creating more jobs. And Everglades restoration projects might be terminated

in the future due to the costs associated with the Amended Agreement, or they may be terminated due to a slew of other reasons, such as legal challenges to permits, construction and land cost overruns, or amendments to the Long-Term Plan, EFA, or CERP. The point is that *Agrico's* immediacy requirement, just like judicial case and controversy requirements, is designed to prevent a present day determination of rights based on speculation as to what will happen in the future. As a result, the Petitions fail to state a claim for relief.

B. Petitioners fail to allege material facts demonstrating a sufficient "injury in fact."

29. The Tribe broadly complains about a series of events that will result from the purchase of the USSC farmland: termination of Everglades restoration projects; a preferential state subsidy to privately-owned USSC; the misuse of *ad valorem* taxes; and the purchase of lands that the District cannot use for a valid public purpose. These events (assuming they take place), however, do not, standing alone, equate with a cognizable injury to the Tribe.

30. Allegations of injury are, for the most part, non-existent in the Tribe's Petition. At several points throughout the Petition, the Tribe generally alleges that its members reside and work on lands it owns, leases, or controls within the Everglades and that the Amended Agreement will delay or eliminate the construction of ongoing and planned restoration projects "which will adversely affect the Tribe's recognized interests, including its interests in the Everglades and its Tribal perpetual lease lands in WCA 3A." Exhibit A at ¶¶ 24, 25, 27, and 29; *see also,* ¶ 28 (delay of projects "will adversely

impact water quality" on Tribal lands). No additional facts are alleged. These conclusory and non-specific allegations of injury, however, are insufficient for stating a claim under Chapter 120. *See e.g., Brookwood Extended Care Center of Homestead v. Agency for Health Care Admin.*, 870 So. 2d 834, 840 (Fla. 3d DCA 2003) ("general denials and non-specific allegations of compliance will no longer suffice"); *Agrico*, 406 So. 2d at 482 (petitioners must "clearly show injury in fact to interests protected by chapter 403").

31. It is generally recognized that a claim for nuisance requires "an appreciable, substantial, tangible injury resulting in actual, material, physical discomfort, and not merely a tendency to injure, or an injury resulting merely in trifling annoyance, inconvenience, or discomfort." *Beckman v. Marshall*, 85 So. 2d 552, 555 (Fla. 1956); *see also. A & P Food Stores v. Kornstein*, 121 So. 2d 701, 703 (Fla. 3d DCA 19960) ("Mere disturbance and annoyance as such do not in themselves necessarily give rise to an invasion of a legal right.") Here, there are no allegations that the District is illegally discharging pollutants into the Everglades or that water quality standards on the Tribe's property are presently being violated. The Tribe does not claim that its members have become ill or sustained bodily injuries, nor describe in any manner how their use of their land interests have been impaired. Significantly, given the Tribe's failure to allege a current injury caused by the District's discharges into the Everglades, it does not stand to reason that the District's failure to build *more* restoration projects in the future will result in a direct injury sufficient to invoke Chapter 120. The Tribe's earlier petitions for

administrative hearing made similar non-specific allegations; however, the Tribe did not attempt to improve upon those allegations in its current petition.

32. New Hope's Petition suffers from the same defect, but for a different reason. New Hope complains that if the District proceeds with the Amended Agreement, existing restoration projects will be terminated and, as a result, the District will violate its discharge permits and the EFA. This, according to New Hope and without elaboration, will "adversely affect the District's ability to provide necessary services to New Hope .... Failure to meet downstream standards could also require further upstream controls, adversely affecting New Hope's regulatory compliance." Exhibit B at ¶¶ 28–29; *see generally* ¶¶ 27–32. As phrased, New Hope has failed to adequately allege an injury. If New Hope is suggesting that the violation of discharge limits will cause a court to order the District's pumps turned off, not only is this entirely speculative but, as discussed *supra*, it is not in accordance with existing law. If, on the other hand, New Hope is complaining that it will have to implement additional BMPs to prevent nutrient pollution from leaving its property, it would appear that the responsibility for this type of injury lies with New Hope and not the District. The fact that New Hope's agricultural runoff is commingled with runoff from other sources would make no difference. *See Wm. G. Roe & Co. v. Armour & Co.*, 414 F.2d 862, 870 (5th Cir. 1969) (applying Florida law). New Hope's earlier petitions made similar non-specific allegations, yet it, too, failed to cure them. Under these circumstances, New Hope fails to allege a cognizable injury.

III. Petitioners have failed to allege material facts demonstrating an injury that is of a type or nature that a Chapter 120 proceeding is designed to protect.

33. Under the second prong of the *Agrico* standing test, the Tribe and New Hope must demonstrate that their complained of injuries are of a type this proceeding is designed to protect, (commonly referred to as the "zone of interest" test.) *See, North Ridge General Hospital, Inc. v. NME Hospitals, Inc.*, 478 So. 2d 1138, 1139 (Fla. 1st DCA 1985). Stated differently, the allegations of the Petitions must be examined to determine whether the facts alleged amount to an injury "under the protection of" pertinent substantive law, a process that entails analysis of regulatory statutes or other relevant substantive law. *Agrico*, 406 So. 2d at 482; *Sickon v. School Board of Alachua County*, 719 So. 2d 360, 363 and n. 3 (Fla. 1st DCA 1998). Thus, in *Agrico*, it was determined that Chapter 403, Florida Statutes, "was not meant to redress or prevent injuries to a competitor's profit and loss statement." 406 So. 2d at 482.

34. Here, the Petitioners fail to allege facts, or point to pertinent substantive law, demonstrating that their alleged injuries are within the zone of interest that this administrative proceeding is intended to protect.

1. Budgetary decisions and expenditures are not of a type or nature that a Chapter 120 proceeding is designed to protect.

35. The District's budgetary decisions, such as to buy the USSC property, are generally not the types of action readily reviewable under Chapter 120 or in any other forum. Generally, a taxpayer does not have standing to contest agency expenditures—even expenditures that exceed the agency's statutory authority or waste public money—

unless he claims to have suffered a special injury distinct from other taxpayers or launches a constitutional attack upon the agency's action. *School Board of Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997) (taxpayer challenge to School Board's purchase of real property); *North Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985) (taxpayer challenge to hospital district's expenditures to expand medical facility).

36. The special injury requirement has been applied in administrative proceedings. *See St. Joe Paper Co. v. Dept. of Community Affairs*, 657 So. 2d 27, 28 (Fla. 1st DCA 1995) (Section 120.57 requires an injury in a manner beyond the injury which might be suffered by the general public); *Grove Isle, Ltd., v. Bayshore Homeowners' Assoc., Inc.*, 418 So. 2d 1046, 1047 (Fla. 1st DCA 1982)(same); *see also, Metsch v. Dept. of Transportation*, DOAH Case No. 08-6353RX, 2009 WL 1643271 (May 7, 2009), at ¶¶ 23-26 (same); *Calabria v. Dept. of Transportation*, DOAH Case No. 02-3531, 2002 WL 31911465 (Dec. 21, 2002) at ¶¶ 44–53 (same); *cf. Terwilliger v. South Florida Water Management District*, DOAH Case No. 01-1504, 2002 WL 569480 (Feb. 27, 2002) at ¶¶ 128–137, *aff'd per curiam*, 846 So. 2d 526 (Fla. 4th DCA 2003) (same).

37. Controlling case law also holds that an agency's allocation and disbursement of funds is not subject to administrative review. In *Palm Beach County Classroom Teachers Ass'n. v. School Board of Palm Beach County*, 406 So. 2d 1208 (Fla. 4th DCA 1981), a teachers' association sought to challenge a decision by the Palm Beach County School Board to not use appropriated funds for salary increases. In upholding the School Board's decision to not provide a 120.57 hearing on the matter, the

Fourth District held "that the allocation and disbursement of the funds received through the SAA involves the modification of the agency's budget which entails neither rule making nor an order within the meaning of those terms as set forth in Section 120.52, Florida Statutes (1980)." 406 So. 2d at 1210; *see also, South County Mental Health Center v. Department of Health and Rehabilitative Services*, DOAH Case No. 89-6088, 1990 WL 749617, at ¶¶ 34-38 (Mar. 28, 1990) ("The preparation, modification or allocation of agency budgets are not reviewable in Section 120.57(1) substantial interest proceedings.")

38. The District is trying to purchase real property and, according to the allegations in the Tribe's three petitions, the District is spending too much money doing so. In objecting to the USSC farmland purchase, however, the Tribe takes two distinctly different approaches. On the one hand, it complains that the District is ignoring various procedural requirements relating to the acquisition or leasing of property, such as whether it is for a valid public purpose and, if so, whether the District needed to obtain appraisals or the best price, *see* Sections 373.093 and .139, Florida Statutes, or comply with a statutory debt cap, *see* Section 373.584, Florida Statutes, or with requirements for public access to public lands and for water supply development (*see* Sections 373.0831 and .1391, Florida Statutes). On the other hand, the Tribe recasts the District's decision to purchase the USSC land as a decision to delay or abandon Everglades restoration projects that, in turn, "adversely affect the Tribe's recognized interests."

39. Several problems exist with regard to the Tribe's standing to pursue its procedural challenges. First, the Tribe does not pay taxes. *See* discussion *supra* at ¶ 1. As such, it is difficult to fathom why the Tribe has standing to object to the purpose of the District's purchase, or the farmland's purchase price or rental rate, or compliance with a debt cap (based on either statute or internal District policy).[3] Similarly, the Tribe also fails to allege any interest that either it or its members have in the recreational use *of the USSC farmlands* that would allow it to invoke the protection of Section 373.1391, Florida Statutes. Finally, with regard to Section 373.0831's requirements for water resource development projects, the Tribe alleges that "the U.S. Sugar land acquisition is not a water resource development project." Petition at ¶ 59. As a result, the requirements of Section 373.0831 do not apply.

40. The Tribe's efforts to recast the USSC contract into a decision by the District to terminate Everglades restoration projects, thereby either creating a special injury as a receiving water user or, in the alternative, bringing the Tribe's claims within a zone of interest created by Chapter 373, Florida Statutes, is also without merit. As discussed *supra*, these allegations of future injuries are based on speculation and do not create a point of entry. Unquestionably, the Everglades Forever Act seeks to reduce phosphorus levels in waters entering the Everglades. If, and when, the District were to

[3] The Tribe claims that implementing the Amended Agreement will result in a future violation of Section 373.584, Florida Statutes. Although Section 373.584 has not yet been signed into law, if that does happen, it will place a potential total annual debt service for bonds issued pursuant to Chapter 373 of 20 percent of annual *ad valorem* tax revenue with which the District must comply. S.B. 2080, 2009 Legislature, s 13 (Fla. 2009).

violate the EFA or a permit by not building a required project, then Petitioner may have a remedy that will allow it to fight the battle it wants to fight now. *See, e.g.*, § 403.412, Fla. Stat. As of now, however, the District is only buying property (albeit a lot of property) and nothing in the District's Everglades restoration regulations prohibit it from doing so. *See, .e.g., Grove Isle*, 418 So. 2d at 1047-48 (DNR's decision that a lease was not required to build a marina, by itself, did not create a point of entry for nearby property owners that feared pollution coming from the marina).

41. Proceeding with an administrative hearing at this juncture would also have the effect of stripping away the District's authority to spend money and determine its own budget—and give it to an assigned administrative law judge to decide. As explained in *Fornes*, standing rules "are based on highly debatable policy choices, but they represent . . . a reasonable effort to guarantee that the state and counties lawfully exercise their taxing and spending authority without unduly hampering the normal operations of a representative democratic government." 476 So. 2d at 156; *see also, Florida Board of Ophthalmology v. State Board of Optometry*, 532 So. 2d 1279, 1284 (Fla. 1st DCA 1988)(not everyone having an interest in the outcome of a particular dispute is entitled to participate as a party in an administrative proceeding to resolve that dispute.) To paraphrase *Fornes*, allowing the Tribe to proceed would render every public expenditure subject to judicial review, unduly hampering and crippling the normal operations of government. *Fornes* at 156. Significantly, the Tribe's Petition is devoid of allegations

describing how the Tribe's interests are different from the general public that also enjoys and uses the Everglades.

42. Stripped down, the Tribe's attack on the Amended Agreement is a complaint about excessive agency spending. As a non-taxpayer that does not allege a special injury beyond those suffered by the general public, the Tribe does not have standing to pursue its claims.

43. Like the Tribe, New Hope claims the District is spending too much money for the USSC farmland. Unlike the Tribe, however, New Hope is a taxpayer, paying both *ad valorem* and agricultural privilege taxes, and may pursue this claim provided it alleges facts showing a special injury.[4] New Hope fails to do so. New Hope's injuries, assuming they ever materialize, would be no different from those experienced by other farmers located within the 500,000 acres of the EAA. *See School Bd. Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997) (discussed *infra*). Moreover, like the Tribe's claims, these injuries are speculative and would have the effect of stripping away the District's authority to spend money and determine its own budget.[5] See ¶¶ 36–43 above.

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[4] New Hope suggests that the Everglades Agricultural Privilege Tax is a "special purpose tax," thereby making it unnecessary to allege a special injury. See Exhibit B at ¶ 33(ii). As provided in the EFA, the Agricultural Privilege Tax is a general law and, as such, is treated no differently than the District's general *ad valorem* taxing authority. § 373.4592(6)(h), Fla. Stat.

[5] New Hope contends that the construction of reservoirs covering over 100,000 acres would result in large water losses via evaporation, thereby further harming its interests. Exhibit B at ¶ 34. This injury would be borne equally by all landowners within the EAA and, therefore, would not constitute a special injury. In addition, the point of an EAA reservoir is to capture stormwater runoff before it goes to tide. Intuitively, the water

2. The Amended Agreement is not a type of "agency action" that Section 120.569 is intended to address.

44. The Amended Agreement, like most contracts, does not qualify as a type of "agency action" within the scope of Section 120.569, Florida Statutes. Section 120.569 applies to "all proceedings in which the substantial interests of a party are determined by an agency." § 120.52, Fla. Stat. Unless otherwise specifically identified, Section 120.52(13) defines a "party" as a person "whose substantial interests will be affected by proposed agency action." "Agency action," in turn, means "the whole or part of a rule or order." § 120.52(3), Fla. Stat. A "rule" is defined as an "agency statement of general applicability that implements, interprets, or prescribes law or policy." § 120.52(16), Fla. Stat. The USSC Land Acquisition Contract does not meet this definition. The term "order," however, is not defined in Chapter 120. As a result, the determination of whether the Amended Agreement constitutes an "order" is dependent upon use of traditional methods of statutory construction.

45. Generally, when a statute does not define a word or phrase, one may refer to dictionaries to obtain or verify the ordinary meaning of each such word, as necessary. *Aarmark Uniform & Career Apparel, Inc., v. Easton*, 894 So. 2d 20, 27 (Fla. 2005). Dictionaries define "order" as "an authoritative indication to be obeyed; a command," *Webster's Ninth New Collegiate Dictionary* (1989), or "a command, direction, or instruction." *Black's Law Dictionary* (8th Ed. 1999). A contract does not fall within

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savings stemming from the construction of a reservoir would far outweigh the losses due to evaporation.

these definitions and, intuitively, this makes sense. A contract is a negotiated agreement between two willing parties. An order, on the other hand, entails a unilateral decision or command issued by an individual or agency.

46. These definitions are consistent with how the terms are used in Chapter 373, Florida Statutes. When defining the general powers and duties of the governing board of water management districts, Section 373.083, Florida Statutes, provides:

> In addition to other powers and duties allowed it by law, the governing board is authorized to:
>
> (1) Contract with public agencies, private corporations, or other persons; sue and be sued; and appoint and remove agents and employees, including specialists and consultants.
>
> (2) Issue orders to implement or enforce any of the provisions of this chapter or regulations thereunder.

§ 373.083, Fla. Stat. (emphasis supplied). Consistent with the terms' everyday and dictionary meanings, Section 373.083 distinguishes between "orders," (i.e. actions involving commands, directions, or instructions enforcing the provisions of Chapter 373) and contracts between the District and third parties. The Amended Agreement is not a command, direction or instruction implementing or enforcing the provisions of Chapter 373 or District rules and, therefore, is not an "order."

47. Chapter 120 should be read *in pari materia* with Chapter 373. *See, South Florida Regional Planning Council v. State Land and Water Adjudicatory Commission,* 372 So. 2d 159 (Fla. 3d DCA 1979) (Chapters 120 and 380 must be read in harmony when determining standing of party to bring administrative action on land management

issue); *see also, Op. Att'y Gen. Fla.* 062-47 (1962) (concluding that Florida Highway Patrol performance review procedures should be read *in pari materia* with Chapter 120). Considering how the term "order" is used in Chapter 373, a contract such as the Amended Agreement should not be considered an "order" or type of "agency action" subject to a 120.569 adjudicatory hearing.[6]

3. Petitioners may not challenge the Amended Agreement pursuant to Sections 373.0831, .093, .139, and .1391, Florida Statutes.

48. The Tribe and New Hope claim the District violated Sections 373.093, .139, and .1391, Florida Statutes, when entering into the Amended Agreement. Exhibit A at ¶¶ 32a-f, 57–59; Exhibit B at ¶¶ 46a, 86. The Tribe also alleges the violation of Section 373.0831, Florida Statutes. In addition to the deficiencies discussed *supra*, these claims must be dismissed for the reasons below.

49. First, with regard to the question of whether the District has authority under Section 373.139, Florida Statutes, to purchase the USSC farmlands for the purpose of Everglades restoration, the Petitioners fail to allege a special injury and, as a result, they

[6] The distinction between an order and a contract, and the conclusion that a contract is not subject to administrative proceedings under Section 120.569, Florida Statutes, is further supported by Section 120.57(3). This provision of the Florida Administrative Procedures Act creates a point of entry for reviewing the bidding process for certain agency contracts. If contracts were "rules" or "orders," there would be no need for Section 120.57(3). Moreover, courts have recognized the limited scope of Subsection (3), noting that persons who protest such bidding decisions based on policy concerns regarding the purpose of the contract may not initiate Chapter 120 challenges. *See, Advocacy Center for Persons v. State*, 721 So. 2d 753 (Fla. 1st DCA 1998) (persons involuntarily confined to a state psychiatric hospital did not have standing to challenge the Request for Proposals for construction to privatize the hospital based on their disagreement with policy decisions concerning the privatization).

do not have standing to raise this statutory challenge. In *School Bd. of Volusia County v. Clayton*, 691 So. 2d 1066 (Fla. 1997), a taxpayer objected to the School Board's purchase of real property claiming that it did not comply with Section 235.054(1)(b), Florida Statutes. That section stated:

> Prior to acquisition of the property . . . for each purpose in an amount in excess of $500,000, the board shall obtain at least two appraisals . . . . If the agreed purchase price exceeds the average appraised value, the board is required to approve the purchase by an extraordinary vote.

691 So. 2d at 1066. The Florida Supreme Court held that the taxpayer did not have standing to pursue his claims. In so ruling, the Court explained that in *North Broward Hosp. Dist. v. Fornes*, 476 So. 2d 154 (Fla. 1985), *supra*, it ruled that "an illegal public action which raises taxpayers' obligations or wastes public money" did not constitute a "special injury" giving rise to standing, and that was still the law in Florida. 691 So. 2d at 1067. *See also, Grove Isle*, 418 So. 2d at 1047; *Shuler v. Canal Authority of Florida*, DOAH Case No. 91-3554, 1991 WL 833854 (Aug. 27, 1991).

50. The Tribe and New Hope challenge the District's legal authority to purchase the USSC farmland claiming, much like the plaintiff in *Clayton*, that it is violating a land procurement statute (remarkably similar to the one at issue in *Clayton*) and spending too much to do so. The Petitioners fail to identify any special interest that would arguably afford them protection under Section 373.139, such as being an EAA

landowner that also sought to have the District buy its property. As a result, the Petitioners do not have standing to pursue this claim.[7]

51. The Tribe and New Hope also contest the Amended Agreement pursuant to Section 373.1391(1)(c), Florida Statutes, a statute relating to the management of water management district property "in such a way as to ensure a balance between public access, general public recreational purposes, and restoration and protection of their natural state and condition." § 373.1391(1)(a), Fla. Stat. When read in its entirety, Section 373.1391 contemplates the development of management plans detailing how public lands will be available to the general public for recreational uses. Because the District has not yet purchased the USSC farmland, let alone developed a land management plan (assuming one is necessary) with which the Petitioners could have a dispute, application of Section 373.1391(1)(c) is premature. It should be noted, however, that Subsection (6) authorizes rule development to specify allowable activities on district-owned lands. In Chapter 40E-7, F.A.C., the District has adopted rules detailing the types of public access allowed and permissible activities. Rule 40E-7.520(7), however, identifies those District lands that are exempt from the public access and use rules,

[7] With regard to Section 373.139(3), including the alleged need for the District to justify spending more than the appraised value of the USSC land, the language in the statute demonstrates that those requirements apply only when a water management district is requesting funds for land acquisition from the Florida Department of Environmental Protection. *See* Section 33 of Ch. 99-247, Laws of Fla.; *see also*, Final Analysis Report of the House of Representatives Committee on Environmental Protection on Bill CS/CS/SB 908, Chapter Law 99-247 (July 26, 1999). Because the District is not using State funds to acquire the property, nor alleged to be doing so, this provision does not apply.

including District offices and "District lands that are commercially leased lands . . . unless the lease specifically permits public access."

52. Third, with regard to whether the Amended Agreement complies with the procedural requirements of Section 373.0831(2) (which addresses water resource and water supply development), it should be noted that the District is purchasing the USSC farmlands under its authority granted under Section 373.139, Florida Statutes, which authorizes the acquisition of land for purposes of flood control, water storage, the conservation and protection of water resources, and the preservation of wetlands, streams, and lakes, *in addition to* water resource and water supply development. Fla. Stat. 373.139(2). Because Section 373.139(2) provides independent authority to acquire the USSC lands for purposes other than water resource and water supply development, the Tribe's reliance on Section 373.0831(2) as grounds for setting aside the contract is misplaced. Moreover, the Tribe fails to allege facts suggesting that its injuries fall within the "zone of interest" that Section 373.0831(2) was intended to protect.

53. Finally, Petitioners assert, as a disputed issue of material fact, whether the Lease Agreement between the District and USSC is contrary to Section 373.093(1), Florida Statutes. Exhibit A at ¶ 32e–f; Exhibit B at ¶ 46a. At the outset, it should be noted that Section 373.139(2), Florida Statutes, provides independent authority to acquire the USSC lands subject to a purchase-leaseback provision. *See* Fla. Stat. § 373.139(2) (the governing board is "authorized to acquire in fee *or less than fee* title to real property . . . .") With regard to Section 373.093(1), it generally provides that land leases be "for

the best price and terms obtainable, to be determined by the Board." Here, the Petitions do not contain allegations the District could have obtained a better rental price, and with better terms, for a lease of a similarly sized parcel of land. In addition, when Subsection 373.093(1) is read in conjunction with Subsections (2) and (3), it is evident that subsection (1) does not apply in the case of a purchase-leaseback transaction (such as the Amended Agreement) where the lease results in a diminution of the District's acquisition costs. Petitioners allege no facts to the contrary.

4. The Governing Board's resolution approving the Amended Agreement and its delegation clause.

54. The Tribe alleges that a provision in the Governing Board resolution approving the Amended Agreement contains language that impermissibly delegates the Board's authority to the Board Chair or Vice-Chair to approve changes to the Amended Agreement. Exhibit A at ¶ 45. The Tribe fails to allege facts, however, showing how its interests have been affected by this language or why it has standing to object. Consistent with *Agrico, supra,* this claim should be dismissed.

ORDER

The District, based upon the above cited Findings of Facts and Conclusions of Law, and being fully informed otherwise, hereby orders that the Petitions for Administrative Hearing filed by the Tribe and New Hope on June 3, 2009, are hereby dismissed with prejudice.

Done and Ordered this 19th day of June, 2009.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT BY ITS DEPUTY GENERAL COUNSEL

BY: Sarah Nall
SARAH E. NALL

GOVERNING BOARD OF SOUTH FLORIDA WATER MANAGEMENT DISTRICT STATE OF FLORIDA SEAL Established 1949

ATTEST:

BY: Jacqueline D McCarty

DATE: June 19, 2009

LEGAL FORM APPROVED:

BY:

DATE: 6-19-2009

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Order has been served on the following by U.S. Mail this 19th day of June, 2009, to DEXTER LEHTINEN, ESQUIRE, Lehtinen Riedi Brooks Moncarz, P.A., Suite 303, 7700 North Kendall Drive, Miami, Florida 33156; and to GABRIEL E. NIETO, ESQUIRE, Berger Singerman, P.A., Suite 1000, 200 South Biscayne Boulevard, Miami, Florida 33131 and JOSEPH P. KLOCK, JR., ESQUIRE and JUAN CARLOS ANTORCHA, ESQUIRE, Epstien, Becker & Green, P.C., Suite 4300, 200 South Biscayne Boulevard, Miami, Florida 33131.

BY: _____
Kirk L. Burns

NOTICE OF RIGHTS

As required by Sections 120.569(1), and 120.60(3), Fla. Stat., following is notice of the opportunities which may be available for administrative hearing or judicial review when the substantial interests of a party are determined by an agency. Please note that this Notice of Rights is not intended to provide legal advice. Not all the legal proceedings detailed below may be an applicable or appropriate remedy. You may wish to consult an attorney regarding your legal rights.

RIGHT TO REQUEST ADMINISTRATIVE HEARING

A person whose substantial interests are or may be affected by the South Florida Water Management District's (SFWMD or District) action has the right to request an administrative hearing on that action pursuant to Sections 120.569 and 120.57, Fla. Stat. Persons seeking a hearing on a District decision which does or may determine their substantial interests shall file a petition for hearing with the District Clerk within 21 days of receipt of written notice of the decision, unless one of the following shorter time periods apply: 1) within 14 days of the notice of consolidated intent to grant or deny concurrently reviewed applications for environmental resource permits and use of sovereign submerged lands pursuant to Section 373.427, Fla. Stat.; or 2) within 14 days of service of an Administrative Order pursuant to Subsection 373.119(1), Fla. Stat. "Receipt of written notice of agency decision" means receipt of either written notice through mail, or electronic mail, or posting that the District has or intends to take final agency action, or publication of notice that the District has or intends to take final agency action. Any person who receives written notice of a SFWMD decision and fails to file a written request for hearing within the timeframe described above waives the right to request a hearing on that decision.

Filing Instructions

The Petition must be filed with the Office of the District Clerk of the SFWMD. Filings with the District Clerk may be made by mail, hand-delivery or facsimile. **Filings by e-mail will not be accepted.** Any person wishing to receive a clerked copy with the date and time stamped must provide an additional copy. A petition for administrative hearing is deemed filed upon receipt during normal business hours by the District Clerk at SFWMD headquarters in West Palm Beach, Florida. Any document received by the office of the SFWMD Clerk after 5:00 p.m. shall be filed as of 8:00 a.m. on the next regular business day. Additional filing instructions are as follows:

- Filings by mail must be addressed to the Office of the SFWMD Clerk, P.O. Box 24680, West Palm Beach, Florida 33416.
- Filings by hand-delivery must be delivered to the Office of the SFWMD Clerk. **Delivery of a petition to the SFWMD's security desk does <u>not</u> constitute filing. To ensure proper filing, it will be necessary to request the SFWMD's security officer to contact the Clerk's office.** An employee of the SFWMD's Clerk's office will receive and file the petition.
- Filings by facsimile must be transmitted to the SFWMD Clerk's Office at (561) 682-6010. Pursuant to Subsections 28-106.104(7), (8) and (9), Fla. Admin. Code, a party who files a document by facsimile represents that the original physically signed document will be retained by that party for the duration of that proceeding and of any subsequent appeal or subsequent proceeding in that cause. Any party who elects to file any document by facsimile shall be responsible for any delay, disruption, or interruption of the electronic signals and accepts the full risk that the document may not be properly filed with the clerk as a result. The filing date for a document filed by facsimile shall be the date the SFWMD Clerk receives the complete document.

Initiation of an Administrative Hearing
Pursuant to Rules 28-106.201 and 28-106.301, Fla. Admin. Code, initiation of an administrative hearing shall be made by written petition to the SFWMD in legible form and on 8 and 1/2 by 11 inch white paper. All petitions shall contain:

1. Identification of the action being contested, including the permit number, application number, District file number or any other SFWMD identification number, if known.
2. The name, address and telephone number of the petitioner and petitioner's representative, if any.
3. An explanation of how the petitioner's substantial interests will be affected by the agency determination.
4. A statement of when and how the petitioner received notice of the SFWMD's decision.
5. A statement of all disputed issues of material fact. If there are none, the petition must so indicate.
6. A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the SFWMD's proposed action.
7. A statement of the specific rules or statutes the petitioner contends require reversal or modification of the SFWMD's proposed action.
8. If disputed issues of material fact exist, the statement must also include an explanation of how the alleged facts relate to the specific rules or statutes.
9. A statement of the relief sought by the petitioner, stating precisely the action the petitioner wishes the SFWMD to take with respect to the SFWMD's proposed action.

A person may file a request for an extension of time for filing a petition. The SFWMD may, for good cause, grant the request. Requests for extension of time must be filed with the SFWMD prior to the deadline for filing a petition for hearing. Such requests for extension shall contain a certificate that the moving party has consulted with all other parties concerning the extension and that the SFWMD and any other parties agree to or oppose the extension. A timely request for extension of time shall toll the running of the time period for filing a petition until the request is acted upon.

If the District's Governing Board takes action with substantially different impacts on water resources from the notice of intended agency decision, the persons who may be substantially affected shall have an additional point of entry pursuant to Rule 28-106.111, Fla. Admin. Code, unless otherwise provided by law.

Mediation
The procedures for pursuing mediation are set forth in Section 120.573, Fla. Stat., and Rules 28-106.111 and 28-106.401-.405, Fla. Admin. Code. The SFWMD is not proposing mediation for this agency action under Section 120.573, Fla. Stat., at this time.

RIGHT TO SEEK JUDICIAL REVIEW
Pursuant to Sections 120.60(3) and 120.68, Fla. Stat., a party who is adversely affected by final SFWMD action may seek judicial review of the SFWMD's final decision by filing a notice of appeal pursuant to Florida Rule of Appellate Procedure 9.110 in the Fourth District Court of Appeal or in the appellate district where a party resides and filing a second copy of the notice with the SFWMD Clerk within 30 days of rendering of the final SFWMD action.

STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

MICCOSUKEE TRIBE OF INDIANS OF FLORIDA, a federally recognized Indian Tribe, Petitioner, v. SOUTH FLORIDA WATER MANAGEMENT DISTRICT, Respondent.	Case No:

PETITION FOR ADMINISTRATIVE HEARING

Petitioner, Miccosukee Tribe of Indians of Florida (the "Tribe"), pursuant to sections 120.569 and 120.57, Florida Statutes (2008), and Rule 28-106.201, Florida Administrative Code, challenges an action of the South Florida Water Management District ("SFWMD") and states:

INTRODUCTION

1. The action at issue is the SFWMD Governing Board's approval of the Amended and Restated Purchase and Sale Agreement (the "Agreement" or "Deal"; Exhibit A) between the SFWMD and United States Sugar Corporation ("U.S. Sugar") as well as the Board's approval of the issuance and sale of approximately $2.2 billion in Certificates of Participation which will be used to pay the costs to acquire U.S. Sugar and the related costs of issuing the series of Certificates. *See* SFWMD Governing Board Resolution 2009-500A, Exhibit C. Incorporated into the Agreement is a related Ground Lease (the "Lease"; Exhibit B).

2. The above described action is "agency action" as defined in Florida Statutes § 120.52(2) as it commits SFWMD through a binding contract to purchase the land of U.S. Sugar and transfer to U.S. Sugar, on or before March 31, 2010, the sum of $536 million.

3. Under the Agreement and the Lease, the SFWMD agrees to purchase certain landholdings of U.S. Sugar for $536 million in cash, and to then lease back those same lands to U.S. Sugar on preferential terms for a period of at least 20 years. U.S. Sugar's rent payment constitutes only a small fraction of what the SFWMD will pay annually in debt service for those lands, thus burdening the public while enriching U.S. Sugar.

4. The SFWMD will purchase 73,000 acres of land, of which 33,000 acres are surplus citrus lands. The SFWMD is limited, for the first 20 years, from a total of the remainder 40,000 acres of sugar cane land apparently purchased, to "takedowns" (i.e. public use) of only 10,000 acres in the first decade and another 10,000 acres in the second decade. The remaining lands are guaranteed to U.S. Sugar for its use at a rental rate that is a fraction of the annual debt service cost to taxpayers. The 33,000 acres of citrus land in the purchase is not part of any identified project configuration set out by the SFWMD. This citrus land will remain under the private control of U.S. Sugar due to the absence of projects and the lack of ability of the SFWMD to fund any projects.

5. Additionally, U.S. Sugar is guaranteed to retain its lands after 20 years via a right of first refusal in the Lease. This gives U.S. Sugar the power to continue to operate for an indefinite period, and that after extracting the full value of its land from the public treasury. Furthermore, U.S. Sugar's ability to use its land under the Lease and right of first

refusal could be far more than 20 years because the SFWMD does not have the financial ability to construct projects even on the land that is available to it.

6. The SFWMD Governing Board's approval of the Deal with U.S. Sugar is a mere land acquisition, for which a water resources development project has not been identified, and will not accomplish Everglades restoration and protection. There were no concrete plans for a water resources development project or projects that will utilize this land when the SFWMD Governing Board approved the Agreement. Nor has the SFWMD identified a funding source to build the plethora of expensive water management structures and/or projects, such as storage reservoirs and Stormwater Treatment Areas ("STAs"), which will have to be built in the future, and at a great public expense, to use the U.S. Sugar land for Everglades restoration and water quality protection.

7. The SFWMD does not have the financial ability to fund the land acquisition without drastic cuts to ongoing Everglades programs, much less to fund construction and carry the significant associated operational, maintenance, and energy costs of actually making use of the U.S. Sugar land in the manner that was the supposed rationale for the purchase. By its own admission, the purchase will leave the SFWMD so financially strained that it cannot hope to raise the billions of dollars needed to actually do anything with the U.S. Sugar land except hold it for the benefit of U.S. Sugar. In fact, the SFWMD has refused, and continues to refuse, to undertake cost estimates for the supposed public use that is the basis for the U.S. Sugar purchase. The SFWMD Assistant Deputy Director of Everglades Restoration admitted, at deposition, that the cost to build the additional projects to use the land would be between $4.5 and $5 billion. Outside engineering cost analyses show that the cost to implement the conceptual plan that was the supposed basis

for the land acquisition would be four to six times the acquisition cost that the SFWMD already cannot afford, between $5.4 and $8.4 billion. Some stakeholders have proposed plans that would cost in excess of $25 billion to construct.

8. Moreover, in addition to needing billions of dollars it can not afford in order for the acquired land to actually be used for the claimed purpose, hundreds of millions more dollars must first be spent to acquire additional lands from U.S. Sugar, all so that the entire block of land purchased under the Deal may be put to public use. Without acquiring additional land from U.S. Sugar, as well as affording the billions needed for constructing infrastructure on the vast landholdings in question, the land will remain under the control of U.S. Sugar. In addition, even that additional land is widely dispersed and would require additional lands owned by third parties to become usable for restoration.

9. U.S. Sugar's land cannot be developed into a project because the SFWMD does not have the financial ability to do so. Since the U.S. Sugar land will continue to be used for agriculture purposes, the land will therefore not be utilized for a purpose within the SFWMD's statutory authority to acquire land.

10. The SFWMD's annual debt service, as a result of the Deal, will rise above the 20 percent debt ceiling mandated under 373.584, Fla. Stat. (2008), as well as the SFWMD's own newly-raised 30 percent total debt ceiling.

11. The Deal improperly delegates to the SFWMD's Governing Board's Chair and Vice-Chair the ability to freely amend the Agreement without full Governing Board approval.

12. The U.S. Sugar purchase will negatively impact the Comprehensive Everglades Restoration Plan ("CERP"), including restoration projects that were expedited

by the SFWMD under the name Accelerβ, which are necessary to restore and clean-up the Everglades. The contract for the expedited EAA Reservoir Phase I Project, which was to work in association with the Stormwater Treatment Areas ("STAs") in the Long Term Plan, has been terminated since the proposed land purchase was announced. The Army Corps of Engineers also announced that it was discontinuing work on the Project Implementation Report ("PIR) for the CERP EAA Reservoir Project, thus effectively canceling this important portion of the CERP project. It is clear that if more than a billion dollars is spent to simply acquire U.S. Sugar land, there will be no money left to complete current, and much needed, Everglades restoration and clean-up projects. The proposed land acquisition, which is the subject of the Governing Board's action, has already negatively impacted the EAA Reservoir Project, the Bolles/Cross canal project, the ECART project, and will have negative impacts on other current Everglades restoration projects, which impacts will become irreversible once the land purchase is completed.

13. The Governing Board action will prevent the SFWMD from carrying out its statutory and regulatory mandate with regards to Everglades Restoration and compliance with the water quality standards for Lake Okeechobee and the phosphorus criterion for the Everglades Protection Area, including Tribal leased lands in WCA 3A.

14. The SFWMD has recently terminated the contract for the construction of the EAA Storage Reservoir Phase 1, located north of the existing Stormwater Treatment Areas ("STAs"). The completion of this EAA Reservoir is critical for the efficient operation of the STAs (which the SFWMD has itself claimed), and for compliance with the Settlement Agreement in S.D. Fla. Case No. 88-1886-CIV-Moreno. The Long Term Plan adopted by the Florida legislature recognized that the EAA Storage Reservoir Project

Phase 1 was scheduled for completion in 2009 and would influence inflow volumes and phosphorus concentrations to STA 3/4. The Legislature mandated that the Long Term Plan be integrated with the Congressionally authorized components of CERP, so that unnecessary and duplicative costs would be avoided. The SFWMD has now abandoned a vital water resources project, which is necessary to meet water quality goals, and on which $256 million has already been spent, merely to buy land that will have no water quality benefit for at least seven years and probably decades.

15. No project has yet been put forward, nor will the money exist after the acquisition closes, to replace the functions of the projects lost as a result of the Governing Board's action. This impact on current Everglades restoration projects has already begun and will become irreversible once the asset purchase is completed. Once the funds are transferred to U.S. Sugar, there is no recourse to retrieve them, and there will be no way to avoid the impacts to the SFWMD's Everglades restoration and clean-up mandates.

16. The U.S. Sugar purchase would result in the same exact traditional agricultural use of the land by the same user, U.S. Sugar, before and after the transaction, but with only one major difference, the payment of $ 536 million of taxpayer money to U.S. Sugar to engage in the traditional agricultural use. The bulk of the assets cannot be developed into a project because (i) the SFWMD does not have the financial ability to do so, (ii) the Agreement itself limits the SFWMD's right to use the land unless it exercises an "option" to purchase 107,000 additional acres for at least an additional $791 million from U.S. Sugar, and (iii) the lands to be acquired are not appropriately located.

17. The SFWMD has intentionally failed to specify all programs that will be cut or delayed to accommodate the U.S. Sugar purchase and the far larger secondary

transaction contemplated in the Agreement. The SFWMD has also refused to calculate or publish implementation and construction costs for the supposed use of the land to be purchased. SFWMD staff has testified in other litigation that these details will not be established until after closing, thus attempting to bootstrap its claim that any administrative review is speculative until these details are known. However, the SFWMD's failure to act properly is an occasion for administrative or judicial review, not an impediment to such review.

18. It is critical that review of the proposed SFWMD Governing Board's action occur at this point in time, as any later remedy would be too little too late. Once the transaction authorized by the Governing Board's action closes, the funding necessary to construct and implement vital Everglades restoration projects will be irrevocably lost. As discussed herein, the substantial and adverse impact on the Miccosukee Tribe is immediate and not merely hypothetical or speculative.

PRELIMINARY INFORMATION

19. The affected entity is the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida. The SFWMD Governing Board ratified the Agreement at issue here, and the SFWMD is the lead entity in consummating the U.S. Sugar acquisition, and is primarily responsible for implementation of the projects in the State's Long-Term Plan, and the Comprehensive Everglades Restoration Plan ("CERP") Projects, including those that were expedited by the SFWMD under the name Acceler8. The SFWMD will also issue and service the approximately $536 million in debt necessary to facilitate the acquisition.

20. Petitioner Miccosukee Tribe of Indians of Florida (the "Tribe") is a federally-recognized and federally-protected Indian Tribe, exercising powers of self-government under a Tribal constitution approved by the Secretary of the Interior, pursuant to the Indian Reorganization Act of 1934, 25 U.S.C. § 476. The Tribe's post office address is Administration Building, U.S. Highway 41, Mile Marker 70, Miami, FL 33199, Tel: (305) 223-8380. The names and addresses of Petitioner's attorneys in this matter are:

Dexter Lehtinen
Felippe Moncarz
Claudio Riedi
LEHTINEN RIEDI BROOKS MONCARZ, P.A.
7700 N. Kendall Drive, Suite 303
Miami, FL 33156
(305) 279-1166
dwl@lehtinenlaw.com
fmoncarz@lehtinenlaw.com
criedi@lehtinenlaw.com

21. The specific final action being challenged is the SFWMD Governing Board's May 13, 2009 ratification of the Agreement and Lease, and the signing of the Agreement on that same day. (Agreement is attached as Exhibit "A" to this Petition; Lease, which is incorporated into the Agreement, is attached as Exhibit "B" to this Petition) This Petition is filed within 21 days of the date the SFWMD signed the Agreement and is therefore timely.

STATEMENT OF AFFECTED INTERESTS

22. The Tribe is an owner of property and a holder of land, which is taxable outside its federally designated lands, within the jurisdiction of the South Florida Water Management District.

23. The Tribe's members reside and work within the Florida Everglades on Indian lands in the Miccosukee Reserved Area ("MRA"), on the border of Everglades

National Park ("ENP") and on perpetually-leased Indian lands in Water Conservation Area 3A ("WCA 3A") and on Federal Reservation lands. The Tribe's members depend upon the Everglades for their entire culture and way of life, and use the Everglades, including without limitation Everglades National Park and Water Conservation Area 3A, for numerous purposes. The Tribe's land interests include: (i) Federal Indian Reservations, which includes those interests located within the Everglades (Alligator Alley Reservation), the Miccosukee Resort and Convention Center and Tobacco Shop (Reservations at Krome), and the Miccosukee gas station and Miccosukee Restaurant located along Tamiami Trail (Reservation at Tamiami Trail); (ii) perpetual Indian Reservation rights to a portion along the border of Everglades National Park (designated by Congress as the Miccosukee Reserved Area ("MRA")); (iii) a perpetual lease with the State of Florida for the use and occupancy of substantial portions of WCA 3A, a vast area of the Everglades which both the United States and the State of Florida guarantee will be maintained in a natural state in perpetuity; (iv) aboriginal title of Tribal members to portions of the Everglades; and (v) rights to traditional use and occupancy in Everglades National Park and Big Cypress National Preserve.

24. Existing restoration and clean-up projects have been terminated, or will be delayed or suspended, as a result of the financial strain imposed by the SFWMD Governing Board's action, which will adversely affect the Tribe's recognized interests, including its interests in the Everglades and its Tribal perpetual lease lands in WCA 3A.

25. The proposed land acquisition has resulted in the termination of the contract for the EAA Reservoir Phase I Project, and the suspension of the Project Implementation Report ("PIR") for the CERP EAA Reservoir Project. The Governing Board's action will

eliminate and/or substantially delay numerous planned Everglades restoration and clean-up projects, including the EAA Reservoir Project, which will adversely affect the Tribe's recognized interests, including the interests of the Tribe and its members in the Everglades on perpetual leased lands in WCA 3A.

26. The SFWMD action taken by the Governing Board will also eliminate and/or substantially delay projects that the Tribe has sought to have constructed, including the EAA Reservoir Phase I Project, and projects in the Long Term Plan that are necessary for treating water flowing onto Tribal leased lands in WCA 3A and the Everglades Protection Area. The Long Term Plan recognized that the EAA Storage Reservoir Project Phase I would influence inflow volumes and phosphorus concentrations to STA 3/4 and would be completed by 2009. The Florida Legislature mandated that the Long Term Plan be integrated with the Congressionally authorized components of CERP, such as the EAA Reservoir Project. Instead, as a result of the proposed land purchase and the Governing Board's action, the SFWMD is abandoning the EAA Reservoir Project, which was supposed to be part of the remedy to clean water going into the Everglades Protection Area (the "EPA"). The EPA includes the Tribe's perpetual leased lands in WCA 3A that the State of Florida has promised to preserve in a natural state in perpetuity for the use and enjoyment of the Tribe and its members. The SFWMD Governing Board's action directly impacts the Tribe's interests as the proposed acquisition has already adversely affected, and will constitute a *de facto* abandonment of, key projects in CERP and the Long-Term Plan that are necessary for Everglades clean-up and restoration in favor of other, as yet unstated measures, with no indication as to the timing, efficacy or cost-effectiveness of any replacement projects.

27. It is in the Tribe's substantial interest, indeed critical to it, to ensure that vital Everglades restoration projects, such as the EAA Reservoir Project, are successfully implemented, and that the SFWMD is able to maintain and fulfill compliance with water quality requirements applicable to Lake Okeechobee, the Everglades Protection Area, and the State's promise to preserve the Tribal leased lands in WCA 3A in a natural state in perpetuity. The proposed land purchase, and action of the SFWMD Governing Board, has resulted in and/or contributed to, the termination of the contract for the EAA Reservoir Project Phase 1 and will eliminate and/or substantially delay numerous planned Everglades restoration projects, which will in turn adversely affect the Tribe's recognized interests.

28. The termination, delay, suspension and/or elimination of water quality and Everglades restoration projects will adversely impact water quality on the Tribe's perpetual leased lands in WCA 3A that Tribe's members use and enjoy, as well as lands on which the Tribe's members reside and work.

29. The SFWMD Governing Board's action will have an adverse impact on the Tribe's recognized interests, including its interests in the Everglades, and will cause immediate harm to the Tribe. The harm stems from the proposed land acquisition, and the SFWMD Governing Board action, which has resulted in and/or contributed to the termination of the EAA Reservoir Project contract, and not from a series of speculative future events and budgetary decisions.

30. In addition to Florida's Administrative Procedure Act, which requires an administrative hearing when an agency determines the substantial interests of a party, the Legislature has mandated that disputes over land management plans of a water management district are to be resolved under Chapter 120, Florida Statutes. Fla. Stat. §

373.1391(1)(c). The management of the U.S. Sugar land, and other land owned by the SFWMD, directly impacts lands that the Tribe's members use and enjoy, and reside on, as well as the Tribe's substantial environmental interest. Thus, this Amended Petition is directly contemplated by the statutes that the SFWMD is violating through the Governing Board action.

31. Absent participation in this proceeding, the Tribe would lose any opportunity for formal administrative review of its substantial interests affected by the U.S. Sugar purchase.

DISPUTED ISSUES OF MATERIAL FACT

32. Petitioner has identified the following potentially disputed issues of material fact and mixed issues of fact and law:

a. Whether the Governing Board's action is outside the scope of the SFWMD's authority to acquire property under section 373.139, Florida Statutes.

b. Whether the SFWMD complied with the requirements for an above-appraised-value purchase of lands under section 373.139, Florida Statutes.

c. Whether the land acquisition deal approved by the SFWMD Governing Board action fails to meet the requirements of Section 137.139(2), Florida Statutes, in that the land purchase alone will not achieve the purpose of flood control, water storage, the conservation and protection of water resources and the protection of wetlands, without the construction of expensive storage reservoirs and stormwater treatment areas, which is not part of the Agreement.

d. Whether the SFWMD exceeded its statutory authority pursuant to Section 373.0831, Florida Statutes by acquiring land when it has no detailed plan or plans for a water resources development project, or projects, to use the land.

e. Whether the SFWMD acted contrary to Section 373.093(1), Florida Statutes, which requires leasing for the "best price", for leasing back the land to U.S. Sugar at below market rate.

f. Whether the SFWMD acted contrary to Section 373.093(1), Florida Statutes, which requires the lease to be consistent with the purpose for which the land or any interest in the land was required.

g. Whether the SFWMD properly accounted for the value of the preferential lease and right of first refusal.

h. Whether the SFWMD is improperly subsidizing U.S. Sugar's farming operations.

i. Whether the SFWMD's inability to implement projects on the U.S. Sugar land due to funding constraints, coupled with the lease terms, will allow U.S. Sugar to operate its business at public expense for the foreseeable future.

j. Whether the SFWMD's environmental justifications for the U.S. Sugar acquisition are arbitrary and capricious.

k. Whether the SFWMD has any presently defined and achievable use for the U.S. Sugar land within the scope of its land acquisition powers.

l. Whether, and when, the SFWMD will have the financial capability to utilize the acquired land for any stated public purpose.

m. Whether the lack of any plan for the implementation of improvements on the land involved in the Deal within a defined or predictable time frame negates the stated purpose and statutory authority of the transaction.

n. Whether the SFWMD action is in violation of statutory requirements that prohibit it from entering into a contract without a commitment for financing.

o. Whether the SFWMD action will result in CERP projects, including the expedited projects formerly referred to as Acceler8, from being cancelled or delayed.

p. Whether the SFWMD action caused or contributed to the suspension of the EAA Reservoir Project Phase I Project and the Project Implementation Report ("PIR") for the EAA Reservoir CERP Project to be suspended.

q. Whether the SFWMD action will result in non-CERP projects, including those in the Long Term Plan, being cancelled and/or timelines for construction not being met.

r. Whether the SFWMD action is contrary the mandate of the Florida Legislature in the Amended Everglades Forever Act that the Long Term Plan be integrated with the Congressionally authorized components of CERP, such as the EAA Reservoir Project, so that unnecessary and duplicative costs would be avoided.

s. Whether the SFWMD action will result in an extended delay in the SFWMD not meeting the 10ppb phosphorus criterion into the water being discharged to the Everglades Protection Area, which was to be achieved by December 31, 2006, including on Tribal perpetual leased lands in WCA 3A.

t. Whether the SFWMD has refused to acknowledge now what specific cuts it will make to existing programs to fund the Deal and the subsequent larger land purchase contemplated in the Agreement so as to thwart administrative or judicial review.

u. Whether the SFWMD's annual debt service will rise to over 20% of its ad valorem revenue in violation of 373.584, Fla. Stat. (2008) as a result of the Deal.

v. Whether the SFWMD's annual debt service will rise to over 30% of its ad valorem tax revenue in violation of its newly-raised 30 percent total debt ceiling as a result of the Deal.

w. Whether the Deal gives improper delegation to the SFWMD's Governing Board's Chair and Vice-Chair to freely amend the Agreement.

x. Whether the SFWMD action will compromise its ability to meet its core mission in the future.

y. Whether the SFWMD action is arbitrary or capricious and contrary to law.

ULTIMATE FACTS ALLEGED

33. Petitioner incorporates by reference Paragraphs 1-25 above, as if fully restated herein.

A. The Initial Deal

34. On June 24, 2008, Governor Charlie Crist and the Vice Chair of the SFWMD's Governing Board, Shannon Estenoz, announced that the SFWMD would purchase a future interest in the land and assets of U.S. Sugar for $1.75 billion allegedly to establish a "flow way" between Lake Okeechobee and the Everglades. During the prior

eight months, officials from the Executive Office of the Governor, the District and DEP had negotiated this transaction with U.S. Sugar.

35. On June 24, 2008, U.S. Sugar and the SFWMD entered into a written agreement -- the "Statement of Principles" -- setting out the key terms of the purchase of the U.S. Sugar's assets. This Statement of Principles formalized the terms negotiated, including the purchase price, the assets to be purchased, and the future interest aspects of the transaction, whereby full payment would be made at closing with title to the assets transferred six years thereafter.

36. The Statement of Principles was "ratified" by the Governing Board of the SFWMD on June 30, 2008. Following that decision a team of negotiators, led by the Secretary of DEP and including staff from the SFWMD, DEP and the Executive Office of the Governor, negotiated the Agreement.

37. The Statement of Principles provided that the final price was to be confirmed by appraisals. The District's analysis of the value of the U.S. Sugar land and assets came back far below the $2.2 billion true value of the initial proposal (factoring in the six-year holdover).

B. <u>The Land-Only Deal</u>

38. In an effort to address this valuation problem, the SFWMD and U.S. Sugar developed the alternative land-only structure, reflected in the Agreement. Under this approach, U.S. Sugar was to remain in business and continue to farm for an indefinite period of time after still receiving more than the SFWMD's financial consultants' estimate of the total value of the company. As opposed to the initial proposal, where U.S. Sugar was to cease operations after a defined period, under the land-only alternative U.S. Sugar

would stay in business, retaining ownership of its mill and refinery, and other industrial assets.

39. While the price was claimed to be $1.34 billion, it would actually have been hundreds of millions of dollars higher because U.S. Sugar would also have been given a preferential lease of the land it would sell to the state. For the first six years, U.S. Sugar could lease its lands at $50 per acre, even though the SFWMD's own estimates are that the lease value is much higher. In the seventh year, U.S. Sugar would get a free lease of its land. For subsequent years, it was to be granted a right of first refusal against the SFWMD competitively leasing the land, guaranteeing U.S. Sugar long-term control until such time, if ever, as the SFWMD can construct the reservoirs and related projects its staff presented to the Governing Board as the basis for the land purchase.

40. The SFWMD provided no analysis to the Governing Board of what it would cost to actually construct a water management project or projects on the U.S. Sugar land or how it would finance such projects prior to the action. Under the terms of the proposed amended agreement, this would have meant that U.S. Sugar would get private use of public lands at public expense for the indefinite future.

C. The 'New' Deal

41. The SFWMD again revised the transaction on May 13, 2009 having found that the first two deals were unaffordable. While crafted to make the transaction cost appear smaller, the new deal is structured so that to actually make use of the land purchased, the SFWMD would need to pay approximately the same $1.34 billion price as the Land-Only Deal. The new structure divides the purchase into a $536 million first step and a $791 million second step.

42. This latest deal, like its predecessor actions, constitutes a purposeless land acquisition not tied to any project by the SFWMD that does not claim to have any ability to do anything beyond the acquisition. The net result is that while the initial public cost is reduced, the lack of public purpose remains and all that results is U.S. Sugar continuing to use its land after receiving the full value thereof from the public treasury.

43. The latest deal requires the SFWMD to pay $536 million apparently for 73,000 acres of land. However, only 20,000 acres are usable for SFWMD's stated purpose. Roughly 33,000 acres are comprised of citrus land located outside the SFWMD's stated project configurations. Of the remaining 40,000 acres of land, the SFWMD can use only half over the next twenty years unless it purchases the remaining 107,000 acres of U.S. Sugar land. To do so would require the SFWMD to pay the balance of the $1.34 billion purchase price, or any higher value of that as the land may be appraised at the time of purchase, whichever is higher. As indicated, the SFWMD has conclusively determined that it has insufficient funds to buy that balance.

44. The SFWMD has never stated what would actually be done with U.S. Sugar's land, much less where the money would come from to make public use of what the SFWMD wants to purchase. The SFWMD has provided no analysis of what it would cost to actually construct projects on the U.S. Sugar land, identified what those projects would be, or determined how it would finance such projects. Therefore, U.S. Sugar gets to cash out from the public treasury and continue private use of public lands for the indefinite future.

45. The latest deal improperly delegates the SFWMD's Governing Board's Chair and Vice-Chair the ability to freely amend the Agreement without full Governing Board approval.

46. Upon information and belief, the SFWMD has failed to estimate the construction cost of the projects that it claims are the basis for the U.S. Sugar Deal so as to avoid administrative or judicial review of the issue or whether such a project can ever be implemented.

D. Project Cuts to Pay for U.S. Sugar Debt Service

47. To pay for this acquisition, the SFWMD will redirect funds from currently planned restoration projects and projects in the Long-Term Plan. The SFWMD signed the Agreement with no detailed plan of a water management project for which the U.S. Sugar land will be used, and with no plan for replacement projects that will provide the restoration and clean-up function of the existing projects being abandoned.

48. For the foreseeable future the only effect of the SFWMD Governing Board action will be to grant a massive public subsidy to U.S. Sugar, which gets to lease its land indefinitely and at a fraction of the public expense. The SFWMD will make annual debt service payments of over $43 million for just the first step, 73,000-acre purchase, that results in little more than subsidizing U.S. Sugar's business, and in return, will get only a small fraction of that back (approximately $6 million) in rent from U.S. Sugar. The SFWMD is therefore paying over seven times as much to finance the cash payment to U.S. Sugar as U.S. Sugar is paying in rent to retain control of what is sold.

49. The SFWMD has attempted to justify the acquisition on the grounds that it is needed for Everglades restoration. The SFWMD is expending essentially all its

Everglades restoration resources on this acquisition, based on little more than a speculative hope that it can one day make use of some of the U.S. Sugar lands for restoration and clean-up. The SFWMD (i) has not yet defined any alternative projects to replace those being eliminated; (ii) has no defined plan for a water resources project that will use the land being acquired; (iii) has no ability to secure the funding needed to build the new restoration projects it vaguely alludes to in its public presentations; and (iv) has no financial ability to exercise the option to purchase the remaining lands. No alternatives to the important Everglades restoration and clean-up projects being shelved or delayed will be realized from the U.S. Sugar acquisition for decades, at best.

50. The SFWMD also failed to account for the impacts on the Everglades that will result from abandoning existing projects, including the EAA Reservoir Project, the Comprehensive Everglades Restoration Plan ("CERP"), and Long-Term Plan projects, that will be cancelled or delayed to pay for U.S. Sugar land. Nowhere has the SFWMD set out a plan for acquiring, and financing the acquisition of, the other land needed for the so-called "restoration." The SFWMD has not identified where the estimated $5.4 to $8.4 billion would come from to build the project or projects that will be necessary (i.e. reservoirs, STAs, or any other infrastructure) that will be necessary to use the land being acquired for Everglades restoration or clean-up purposes. Nor is there any analysis of the implications of abandoning the federal-state partnership on CERP, which could in turn result in giving up any federal funding while at the same time spending all of the SFWMD's resources on acquiring the U.S. Sugar land.

51. Under the Agreement, the SFWMD will acquire significant amounts of land that cannot be used for a so-called "flow way" under any conceivable scenario, particularly

since the U.S. Sugar land is non-contiguous and spread throughout the EAA. The SFWMD has claimed that it will attempt to sell off unneeded lands, but this arbitrarily fails to note that under the current contract and preferential lease, U.S. Sugar has encumbered the land such that the SFWMD cannot do anything other than facilitate U.S. Sugar's continued farming, on preferential terms, at the public's expense for many years to come.

52. The debt used to finance the acquisition (the "Purchase Debt") will place the SFWMD near its current maximum debt service limit (the "Debt Cap"), as set out in the SFWMD's Debt Management Policy, Article IV, South Florida Water Management District Policies and Procedures. The Purchase Debt will be approximately $43 million per year for the first stage alone. To utilize the U.S. sugar land, the SFWMD will, however, need to undertake the second stage purchase which will cost 1.5 times as much as the initial stage. This second stage purchase would place the SFWMD above its Debt Cap. Based on the SFWMD's own revenue projections, the $791 million plus second stage purchase is not feasible. Therefore, the SFWMD, upon closing of the Deal, would have incurred the Purchase Debt and transferred the proceeds to U.S. Sugar.

53. Additionally, the SFWMD has moved itself above its newly-raised 30 percent total debt ceiling and above the 20 percent debt service cap applicable to the SFWMD mandated under 373.584, Fla. Stat. (2008). The Deal will cause the SFWMD debt service to rise to approximately 31 percent, in violation of 373.584, Fla. Stat. (2008). SFWMD is also in violation of this statute by taking action to issue debt in excess of percent.

E. The Agency Action is an Improper De Facto Abandonment of CERP and other restoration and clean-up projects

54. The U.S. Sugar purchase will negatively impact the Comprehensive Everglades Restoration Plan ("CERP") and other ongoing projects, necessary to restore and clean-up the Everglades. As a direct result of the U.S. Sugar acquisition, the SFWMD will cancel and/or delay projects, including projects that were expedited under the name Acceler8, such as the EAA Reservoir Project, and those in the State's Long-Term Plan. Indeed, the contract for the EAA Reservoir Project, Phase 1 has already been terminated. The proposed land acquisition has also already negatively impacted the the Bolles/Cross canal project, the ECART project, and will have negative impacts on other current Everglades restoration projects, which impacts will become irreversible once the land purchase is completed.

55. Upon closing on the Deal, the SFWMD will have irrevocably departed from current CERP and/or Acceler8 and/or expedited projects, and Long-Term Plan projects, having committed the funding to acquiring U.S. Sugar land. Even if replacement projects are available, the SFWMD has not identified any sources for the capital or debt service revenue needed to implement such projects in order to replace the functions of the projects that will be lost in the rush to make the U.S. Sugar land acquisition. Furthermore, the SFWMD will not be able to actually do anything with the U.S. Sugar land for the indefinite future due to lack of funding.

56. The SFWMD was supposed to meet 10 ppb in waters being discharged to the Everglades Protection Area by December 31, 2006 but has failed to do so. Some of the projects, including the Compartment B and C STA expansions that were to work in concert with the EAA Reservoir Project to help the SFWMD meet water quality goals,

may now be abandoned or delayed to fund the land acquisition. Because the SFWMD is expending its available project funds for land that is encumbered by leases and intends to use a portion of that land for any new replacement projects, it could not even begin implementing projects until 2016 to replace those that were due to be completed in the near future. This is assuming that there will even be any money to build replacement projects after more than a billion dollars is spent just buying land. Absent new revenues (none have been identified) the SFWMD will not be able to actually do anything with the land it acquires for the indefinite future.

F. The Agreement Does Not Comply With the Requirements for Land Acquisition for Water Management

57. The power vested in SFWMD to acquire land is not absolute and is limited to the lawful exercise of its discretion, which is subject to challenge by a substantially interested party such as the Tribe. The Legislature has specifically declared that land management plan disputes are subject to the Florida APA. (Fla. Stat., Chapter 120); *See* Fla. Stat. § 373.1391(1)(c).

58. Section 373.139, Fla. Stat., limits the SFWMD's power to acquire land and, among other things, allows land to be acquired only for "flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes." Fla. Stat. § 373.139(2). None of these purposes are met by the U.S. Sugar purchase. The acquisition of property merely to be leased back to the seller for the indefinite future does not meet any public purpose, much less fall within the restrictive list of required uses under §373.139.

59. Section 373.0831(2) shows that it was the intent of the Florida Legislature that water management districts, including the SFWMD, take the lead in identifying and implementing water resource development projects. The U.S. Sugar land acquisition is not a water resource development project, nor has the SFWMD identified a water resources project or projects for which the land will be used. The SFWMD has exceeded its statutory authority by approving an Agreement to spend $536 million merely to acquire land without identifying a detailed water resources development project or projects for which the land will be used.

G. **The Deal is Arbitrary and Capricious and Serves No Public Purpose.**

60. The SFWMD's purchase of this land for purposes that it has no ability to effectuate, and at the expense of current Everglades restoration projects, is arbitrary and capricious. The only party that will benefit is U.S. Sugar, which continues to control its land for so long as the SFWMD remains financially crippled by the purchase debt.

61. The SFWMD has already terminated the contract for the EAA Reservoir Project Phase 1. Once the purchase price is paid to U.S. Sugar the SFWMD will have effectively committed itself to abandoning the Acceler8 and/or expedited projects on which it has already spent hundreds of millions of dollars, including the EAA Reservoir Project, and those in the Long-Term Plan that are necessary to meet the already overdue water quality goal. To date, the SFWMD has not proposed any alternative projects to replace those that will be cancelled or delayed, nor identified where the funding for any such alternatives would come from.

62. Because of the SFWMD's lack of analysis of this critical issue, its action is arbitrary and capricious.

63. The SFWMD Governing Board's action will add decades of delay to vital Everglades restoration and cleanup projects, thereby injuring the Everglades and the Tribe. The SFWMD action will eliminate and/or substantially delay projects that the Tribe has sought to have constructed to protect the Everglades, including the EAA Reservoir Phase I Project, and the projects in the Long Term Plan, which are necessary to treat water flowing into the Everglades Protection Area, including Tribal leased lands in WCA 3A, which the State of Florida promised to preserve in a natural state for the use and enjoyment of the Tribe. The Miccosukee Tribe, and its members, have suffered immediate harm from the land acquisition and/or Governing Board action, which has caused or contributed to the termination of the EAA Reservoir Phase 1 Project, which the SFWMD itself stated was part of a remedy that was supposed to work in concert with STA expansions, to help rectify water quality problems in the Everglades Protection Area.

GOVERNING RULES AND STATUTES

64. The specific statutes and regulations requiring that the agency action be declared invalid include sections 120.569, 120.57, 373.019, 373.081, 373.0831, 373.093, 373.139, 373.4592, 373.584 Florida Statutes, and Chapters 62-302 and 28-106, Florida Administrative Code.

RELIEF SOUGHT

Petitioner requests that the SFWMD refer this matter to the Division of Administrative Hearings; that an Administrative Law Judge be assigned to conduct a hearing concerning the issues raised by this Petition; and that the SFWMD Governing Board Action be declared invalid for the reasons set forth herein.

Dated: June 3, 2009

Respectfully submitted,

LEHTINEN RIEDI BROOKS MONCARZ, P.A.
Dexter Lehtinen, Fla. Bar No. 265551
Felippe Moncarz, Fla. Bar No. 182109
Claudio Riedi, Fla. Bar No. 984930
7700 N. Kendall Drive, Suite 303
Miami, FL 33156
(305) 279-1166 (Tel)
(305) 279-1365 (Fax)
dwl@lehtinenlaw.com

Attorneys for Petitioner Miccosukee Tribe

By: _____
Dexter Lehtinen

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Petition has been sent via hand-delivery to the South Florida Water Management District, 3301 Gun Club Road, West Palm Beach, Florida 33406 on this 3rd day of June 2009.

By: _____
Dexter Lehtinen

Exhibit A

AMENDED AND RESTATED AGREEMENT FOR SALE AND PURCHASE

THIS AMENDED AND RESTATED AGREEMENT FOR SALE AND PURCHASE (this "Agreement") is made as of May 13, 2009, by and among **UNITED STATES SUGAR CORPORATION**, a Delaware corporation ("Parent"), **SBG FARMS, INC.**, a Florida corporation ("SBG") and **SOUTHERN GARDENS GROVES CORPORATION**, a Florida corporation ("SGGC") (collectively, "Selling Subsidiaries" and, together with Parent, individually and collectively, the "SELLER"), and the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public corporation created under Chapter 373 of the Florida Statutes, as BUYER (together with its successors and assigns, "BUYER"). BUYER and each SELLER are referred to herein individually as a "Party" and collectively as the "Parties." Each of the Parent and BUYER shall furnish to the other an original of this Agreement executed on its behalf promptly after execution.

For and in consideration of mutual covenants set forth herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and in further consideration of the terms and conditions hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

1. AGREEMENT TO SELL AND BUY

a. SELLER and BUYER have previously entered into an Agreement for Sale and Purchase dated December 29, 2008, as amended by that certain First Amendment to Agreement for Purchase and Sale dated January 15, 2009, that certain Second Amendment to Agreement for Purchase and Sale dated February 12, 2009 and that certain Third Amendment to Agreement for Purchase and Sale dated March 12, 2009 (collectively, the "Original Agreement") for approximately 180,000 acres. In connection therewith, SELLER and BUYER have now agreed to amend and restate the Original Agreement to provide, among other things, that SELLER shall sell and BUYER shall purchase approximately 72,813 acres on the Closing Date and BUYER shall thereafter have an option to purchase the remaining approximately 107,817 acres in accordance with the provisions hereof. Accordingly, by execution of this Agreement, the Original Agreement shall be deemed to be completely amended, restated, replaced and superseded by the terms of this Agreement.

b. The SELLER hereby agrees to sell to the BUYER and the BUYER hereby agrees to buy from the SELLER, subject to the terms and conditions hereinafter set forth, that certain real property located in Hendry, Glades, and Palm Beach Counties, Florida (collectively, the "Counties"), legally described in **Exhibit "A"** attached hereto and made a part hereof; it being understood that the parties anticipate that the total acreage of the Premises shall be approximately seventy-two thousand eight hundred thirteen (72,813) acres, together with all and singular the rights, tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining (hereinafter referred to as the "Premises"); it being agreed

that in no event shall the Premises include any unharvested citrus and planted sugar cane crops, which Seller shall retain subject to the terms of the Lease (provided that pursuant to the Lease any cane stubble existing at the end of the Lease term shall belong to BUYER). Subject to the Title Exceptions, the conveyance of the Premises will include, without limitation, all citrus groves, fixtures, buildings, structures, improvements, pumps, pump motors, pump stations, culverts, ditches, canals, levees, roads, bridges, and all other irrigation and drainage works and infrastructure located on the Premises and any and all other right, title and interest in and to the Premises, including but not limited to all logs and timber rights, all water rights, all mineral rights, all oil and gas rights, all pasturage rights, all grazing rights and all other rights connected with the beneficial use and enjoyment of the Premises; as well as all right, title and interest in all alleys, roads, streets, streams, canals, ditches and other water bodies located on the Premises, appurtenant to the Premises or which may provide access to the Premises; and all right, title and interest in any alleys, roads, streets and easements included within the Premises, appurtenant to the Premises or which may provide access to the Premises.

c. Notwithstanding anything in this Agreement to the contrary, but subject to the express conditions of this Agreement, in no event shall any of SELLER's or BUYER's rights or obligations hereunder be deemed to be conditioned upon BUYER entering into any third party agreements including, without limitation, real property swaps, asset purchases or sales, or real property purchases or sales.

d. Should BUYER determine before or after Closing that minor adjustments to the relative boundaries of the Premises and SELLER's retained lands (but only to the extent that SELLER then owns such lands) would advance BUYER's purposes for the Premises, SELLER and BUYER agree to mutually and reasonably cooperate to consider whether a mutually agreeable land swap can be implemented, without additional consideration, to accomplish such objective, it being agreed that if either Party determines that such swap cannot be accomplished on terms and conditions acceptable thereto, then such Party may elect to not enter into such land swap without any further obligation or liability.

2. PURCHASE PRICE

The purchase price for the Premises is **FIVE HUNDRED THIRTY-SIX MILLION FOUR HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED EIGHTY AND No/100 U.S. Dollars ($536,486,180)** (the "Purchase Price") payable at time of Closing by a wire transfer in immediately available funds from BUYER to Title Company ("Closing Agent"), to be disbursed by the Closing Agent by wire transfer in immediately available funds to SELLER at Closing, subject only to the prorations and adjustments as otherwise provided in this Agreement. The Purchase Price is subject to adjustment based upon $7,368.00 per acre multiplied by the actual amount of acres reflected on the Surveys (as defined in Section 5).

3. TIME FOR ACCEPTANCE

This Agreement shall not be effective unless it is executed and delivered by the SELLER to the BUYER on or before May 12. 2009, and is executed by the BUYER on or before May 14, 2009. Notwithstanding the foregoing, in the event this Agreement is executed by the SELLER and delivered to the BUYER after May 12, 2009, BUYER, in BUYER's sole and absolute discretion, may extend said date until the date the BUYER actually receives this Agreement fully executed by the SELLER. The effective date of this Agreement ("Effective Date"), for purposes of performance, shall be regarded as the date when the BUYER has signed this Agreement. Acceptance and execution of this Agreement shall void any prior contracts or agreements between the parties concerning the Premises unless incorporated by reference herein.

4. CLOSING DATE

Subject to the terms and conditions of this Agreement, unless this Agreement shall have been earlier terminated in accordance with its terms, the consummation of the sale and purchase of the Premises (the "Closing") shall occur (a) on or before ninety (90) days after the later to occur of: (i) Validation, or (ii) the expiration of the Solicitation Period (as defined in Section 25 below), at the offices of SELLER's counsel in West Palm Beach, Florida, or (b) at such other time, place and manner (including via facsimile or electronic transmission) as may be mutually agreed to in writing (without any obligation to do so) by the Parties hereto (such time and date on which the Closing occurs being referred to herein as the "Closing Time" and the "Closing Date", respectively). Notwithstanding the foregoing, either SELLER or BUYER may terminate this Agreement by written notice to the other if Validation has not been issued by March 31, 2010 ("Outside Date").

5. EVIDENCE OF TITLE

a. Survey. As of the Effective Date, SELLER, at BUYER's request, has caused surveys of lands to be prepared which include, among other lands, all of the Premises (each, a "Prior Survey" and collectively, the "Prior Surveys"). BUYER agrees that it shall reimburse SELLER in the amount of $5,775,000 in connection with the preparation of the Prior Surveys within forty-five (45) days after the Effective Date (it being understood that this obligation shall survive any termination of this Agreement). Any additional cost or expense of the Prior Surveys in excess of $5,775,000 shall be borne by SELLER. BUYER, at BUYER's sole cost and expense, shall directly contract for and shall cause the Premises to be separately surveyed, which separate surveys (each, a "Survey" and collectively, the "Surveys") shall: (i) be made by a duly licensed Florida surveyor; (ii) be prepared in accordance with the minimum technical standards set forth by the Florida Board of Land Surveyors pursuant to Section 472.027, Florida Statutes, and Chapter 61G17, Florida Administrative Code and those certain requirements set forth in Schedule 5.a, unless otherwise agreed to by BUYER; (iii) not be required to reflect improvements located within the boundaries of the Premises, except as may otherwise be required by Schedule 5.a.; (iv) contain a legal description of the Premises (or applicable portion

thereof); and (v) contain a certificate in favor of SELLER, SELLER's counsel, BUYER, BUYER's counsel, the Title Company (as defined herein), the Title Agent (as defined herein), the corporate trustee issuing the Certificates of Participation, any credit enhancer securing the Certificates of Participation and other Persons as reasonably designated by BUYER. Upon receipt of any Survey by BUYER, BUYER shall promptly deliver certified copies of the same to SELLER, in the number of copies reasonably requested by SELLER at BUYER's expense. BUYER shall provide SELLER with written notice of any objections to the Surveys (the "Survey Objections") within thirty (30) days after receipt of the same, it being agreed that BUYER shall deemed to have accepted the matters disclosed in the Surveys to the extent BUYER does not timely provide notice of such Survey Objections within such 30-day period. From and after the Effective Date, BUYER shall approve in writing the scope of work, including the cost thereof, for the Surveys, and upon such approval, BUYER will direct the surveyors to prepare the Surveys in accordance with a contract directly between BUYER and the surveyors. BUYER shall pay the costs of such Surveys no more frequently than monthly within thirty (30) days after receipt of invoices thereof (it being understood that this obligation shall survive any termination of this Agreement). Prior to Closing, BUYER, at BUYER's sole cost and expense, may request updates of the Survey from time to time (the "Survey Updates").

b. Title Binder. SELLER has received Chicago Title Insurance Company ("Title Company"), Commitment Report No. 300804668 (Draft No. 3) dated June 30, 2008 as to lands in Glades County, June 19, 2008 as to lands in Hendry County and July 3, 2008 as to lands in Palm Beach County which included the Premises (collectively, the "Original Commitment"), together with copies of the exceptions set forth therein. The Original Commitment is acceptable to and approved by BUYER subject to the objections raised in BUYER's letter to SELLER dated February 6, 2009, except for objections to Nos. 16, 68, 191, 194X, 194Y, 194Z, 194AA, 267, 287A, 288 and 494 (solely to the extent that such title exception encumbers the Premises) of Schedule B-II of the Original Commitment and the objection to oil, gas and mineral reservations set forth in Paragraph No. 24 of such letter (solely to the extent that such title exceptions encumber the Premises), which objections BUYER hereby waives (the objections set forth in such letter that are not waived as set forth above and which relate to the Premises are herein called the "Title Objections"). SELLER shall have thirty (30) days after the Effective Date to cause the Title Company to issue and deliver to BUYER a title binder or binders for the Premises with legible copies of the deeds vesting title in, and conveying title from, SELLER and all instruments affecting title attached thereto (collectively, "Title Binder"), committing the Title Company to issue in BUYER's favor an ALTA title insurance policy or policies insuring BUYER's interest in the Premises (collectively, the "Title Policy") in the amount of the Purchase Price (it being agreed that separate policies may be issued for each portion(s) of the Premises that are owned by each of Parent and its Selling Subsidiaries so long as the aggregate amount of the title insurance is equal to 100% of the Purchase Price).

BUYER shall provide SELLER with written notice of any objections to the Title Binder within thirty (30) days after receipt of the same, it being agreed that (A) BUYER may only object to matters in the Title Binder that have not already been approved or deemed approved by BUYER in the Original Commitment or the Survey (i.e., matters other than the Title Objections or Survey Objections) and (B) BUYER shall be deemed to have accepted the matters disclosed in the Title Binder to the extent BUYER does not timely provide notice of the such objections within such 30-day period (any such timely written objections to the Title Binder are herein called the "Additional Title Objections"). Prior to Closing, BUYER may request updates of the Title Binder from time to time (the "Title Updates"). BUYER shall provide SELLER with written notice of any objections to the Title Updates or Survey Updates within thirty (30) days after receipt of the same, it being agreed that (A) BUYER may only object to matters that have not already been approved or deemed approved by BUYER in the Original Commitment, the Title Binder or the Survey or any prior Title Updates or Survey Updates and (B) BUYER shall be deemed to have accepted the matters disclosed in the Title Updates or Survey Updates to the extent BUYER does not timely provide notice of the such objections within such 30-day period (the Survey Objections, Title Objections, Additional Title Objections and any timely objections to Survey Updates and Title Updates as provided above are collectively referred to herein as the "Objections"). The amounts of re-insurance obtained by the Title Company and the title companies providing such re-insurance shall be reasonably acceptable to the Parties. Assuming that BUYER does not terminate this Agreement pursuant to **Section 7.a.xvi**, then, at the Closing, BUYER shall accept title to the Premises and the Title Policy, subject to the following (collectively, "Title Exceptions"):

i. Real property taxes, assessments and special district levies that are not yet due and payable, for the year in which the Closing occurs, and for subsequent years; and

ii. All of those certain matters set forth on Schedule B-II to the Title Binder and any updates thereof and any matters that may be shown by the Survey, in each case, as of the Closing Date, subject to SELLER's obligation to cure Curable Title Defects, if any, as defined in and pursuant to **Section 5.c.** below.

c. Owner's Affidavit, Curable Title Defects. SELLER shall: (i) deliver to the Title Company the Owner's Affidavit at Closing, together with any other customary resolutions that may be required by the Title Company to evidence the corporate authority of each SELLER to enter into this transaction and convey its respective rights, title, and interests in and to the Premises to BUYER; and (ii) be absolutely obligated to satisfy, discharge or release of record or insure over at Closing (A) any and all mortgages, consensual liens (i.e., signed by the appropriate SELLER),

construction liens filed under Chapter 713, F.S., Notices of Commencement (as defined in Section 713.01(22), Florida Statutes) and final and unappealable liquidated judgments as to which a SELLER has been duly served (i.e., not a default judgment without notice), all regardless of amount, which encumber the Premises, (B) any liquidated default judgments and other liens as to which the fixed amount to discharge the same can be ascertained from the face of the lien instrument, all up to an aggregate amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 U.S. DOLLARS ($1,200,000.00) (collectively, the "Curable Title Defects"), in each case, without any obligation to commence any action or proceeding in connection therewith. Other than the Curable Title Defects, in no event shall SELLER be deemed to have any obligation to cure any other title or survey matters (including the Objections that are not otherwise expressly referenced in clauses (i) and (ii) above); provided, however that prior to or at Closing, SELLER shall, at its sole cost and expense, satisfy, solely to the extent that the same are included in the Title Binder, Items Nos. 1(a), 2 (solely with respect to mortgagors), 3, 4, 5, 6, 7, 8, 10 and 12 set forth in Chicago Title Insurance Company Commitment Report No. 300804668 (Draft No. 2) dated September 17, 2008, and Item No. 14 in Endorsement No. 2 to Commitment Report No. 300804668 (Draft No. 2) issued by the Title Company dated October 14, 2008, solely as the same relate to the Counties within which the Premises are located and not any other counties (e.g., SELLER may obtain a partial release of mortgage(s) to release the Premises from any such mortgages but not release the portion of any property not being conveyed by SELLER to BUYER).

d. Title Agent. All title insurance shall be issued by an authorized agent ("Title Agent") for the Title Company, and both SELLER and BUYER hereby waive any conflict which may exist by virtue of the Title Agent also serving as legal counsel to SELLER.

e. Encumbrances arising from and after the date of this Agreement. From and after the Effective Date, SELLER shall not execute or record any agreement or instrument in any way affecting the title to the Premises or grant, convey, encumber, lease (except as otherwise provided in Section 12.a.xvii) or consent to the imposition of any additional lien on any portion of the Premises without BUYER's prior written consent; provided, however, that BUYER shall not have any right to object to SELLER's recording of any instruments, for corrective title instruments or in connection with any financings or refinancings permitted by the terms of this Agreement.

f. Removal of Portions of the Premises. Prior to Closing, BUYER has the right to unilaterally elect to remove any portion of the Premises that is subject to any title or survey matters objectionable to BUYER so long as there is no reduction in the Purchase Price. BUYER and SELLER may mutually agree, each in their sole and absolute discretion without any obligation to do so, as to any removal of any portion of the Premises that is subject to any title or survey matters objectionable to BUYER as to which BUYER is requesting a reduction in the Purchase Price;

provided that if the Parties cannot agree, each in their sole and absolute discretion, then BUYER's sole remedies shall be (x) to terminate this Agreement pursuant to **Section 7.a.xvi** , or (y) to remove the portion of the Premises without a reduction in Purchase Price. Notwithstanding the foregoing, BUYER shall have the right to exclude from the Premises up to One Hundred Twenty (120) acres of land that is uninsurable (without additional cost to BUYER, unless SELLER elects to pay such additional insurance costs) or contains obligations that are prohibited by law as applied to BUYER, in which event BUYER and SELLER shall automatically adjust the Purchase Price by an amount equal to the aggregate sum of the value for each such acre excluded (based upon the applicable value(s) set forth in **Schedule 5.f** attached hereto). In the event that any portion of the Premises is removed from the Premises as permitted under this **Section 5.f.**, (i) BUYER shall provide access and utility (including drainage) easements to SELLER, in form and substance (including rights of relocation) reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for SELLER to continue to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from such property, together with any applicable utility service, and (ii) SELLER shall provide access and utility (including drainage) easements to BUYER or a third party to whom BUYER has sold a portion of the Premises, in form and substance reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for BUYER or such third party to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from the Premises (or affected portion thereof), together with any applicable utility service.

g. Title and Survey Costs. SELLER shall pay: (i) any and all costs (including search charges and premiums) required for the issuance of the Title Binder and continuations and extensions thereof (including any and all updates thereof) and the Title Policy, other than any costs for the issuance of any endorsements; and (ii) the costs of the Prior Surveys to the extent they exceed $5,775,000. BUYER shall pay: (a) any costs for the issuance of any desired or applicable endorsements to the Title Policy; (b) $5,775,000 to SELLER in reimbursement of the costs of the Prior Surveys within forty-five (45) days after the Effective Date; and (c) the costs of the Surveys and any Survey Updates.

h. Title Insurance Policy. SELLER shall request the Title Company to issue a Title Binder that commits to issue a "Formerly American Land Title Association Owner's Policy Form B-1970 (Revised 10-17-70 and 10-17-84)" without creditor's rights exceptions (the "1970 Policy"). SELLER and BUYER shall provide any reasonable documentation in their respective possession requested by the Title Company in connection with the issuance of such 1970 Policy, provided that SELLER shall have no obligation to deliver such 1970 Policy.

i. Quit-Claim Deeds. SELLER agrees, at any time after Closing upon written request of BUYER, to execute any corrective quit-claim deeds that may be

necessary to effectuate this transaction, including the conveyance of strips, gaps and gores. This **Section 5.i.** shall survive Closing.

6. SELLER'S DELIVERIES

a. SELLER shall make available to BUYER, to the extent in SELLER's possession or reasonable control, the following documents and instruments related to the Premises within ten (10) days after written request of BUYER, except as specifically indicated:

i. Copies of any reports or studies (including engineering, environmental, soil borings, and other physical inspection reports) with respect to the physical condition or operation of the Premises, if any.

ii. Copies of all licenses, variances, waivers, permits (including but not limited to all surface water management permits, wetland resource permits, consumptive use permits and environmental resource permits issued by the BUYER), authorizations, and approvals required by law or by any governmental or private authority having jurisdiction over the Premises, or any portion thereof (the "Governmental Approvals"), as well as copies of all unrecorded instruments which are material to the use or operation of the Premises, if any.

iii. Copies of all contracts, agreements, insurance policies and all other information to the extent related to the Premises and reasonably needed by BUYER to evaluate this transaction.

iv. Copies of reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage, in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by BUYER, subject to the trade secret protocol established by SELLER.

With respect to any such information made available to BUYER pursuant to this **Section 6.a.** that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), BUYER shall follow the trade secret protocol established by SELLER attached hereto as **Schedule 6.a.**).

b. Notwithstanding the foregoing, in no event shall SELLER be obligated to provide any (i) financial or accounting information (e.g., pro-formas, tax returns, production reports, financial statements, appraisals, etc), other than reports listed in subsection (a)(iv) above; (ii) confidential information (i.e., subject to a confidentiality agreement with another party); (iii) information that is proprietary (except for the information described in Paragraph 6.a. above); or (iv)

information that pertains to SELLER's business operations or assets other than the Premises.

c. As of or promptly after the Closing Date, to the extent transferable, SELLER and BUYER shall take such actions as are necessary to modify or transfer all of the Governmental Approvals of each SELLER relating to the Premises in accordance with **Exhibit 6.c** attached hereto (inclusive of any related land owner agreements), subject to the right of SELLER to continue its agricultural operations on the Premises pursuant to the Lease and to continue SELLER's agricultural operations on any other real property leased by SELLER, it being agreed that BUYER and SELLER shall mutually and reasonably cooperate to ensure that SELLER continues to receive the legal rights and entitlements afforded under the Governmental Approvals for such operations. In addition, to the extent permitted by applicable law, BUYER shall be listed as owner and SELLER shall be listed as an operator and/or joint permittee under any Governmental Approvals during the term of the Lease; provided, however, nothing in this subparagraph c. shall be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued or to obligate BUYER to issue any Governmental Approvals or to obligate BUYER, as purchaser under this Agreement, to take any action that conflicts with the enforcement obligations of the relevant regulatory agencies. This Section shall survive Closing.

d. BUYER shall (and BUYER shall cause BUYER's Representatives) to keep any and all written or verbal information provided by SELLER or SELLER's Representatives, or otherwise obtained by BUYER, either prior to or after the Effective Date, with respect to the Premises or the transactions contemplated hereby, in strict confidence in accordance with the terms and conditions of that certain Confidentiality Letter dated July 5, 2008 between Parent and BUYER, a copy of which is attached hereto as **Schedule 6.d**. "BUYER's Representatives" means any and all of BUYER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by BUYER in connection with the acquisition of the Premises, and investment bankers and underwriters engaged by BUYER to structure and issue the Certificates of Participation or the refinancing of the Certificates of Participation. "SELLER's Representatives" means any and all of SELLER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by SELLER in connection with the conveyance of the Premises.

7. ADDITIONAL CONDITIONS PRECEDENT TO CLOSING

a. In addition to all other conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in this Agreement, the following shall be additional conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein:

i. The physical condition of the Premises shall be in all material respects the same on the date of Closing as on the Effective Date of this Agreement, reasonable wear and tear excepted.

ii. At Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened which after Closing would, materially adversely affect the value of the Premises.

iii. On the day of Closing, the Premises shall be in material compliance with all applicable federal, state and local laws, ordinances, statutes, rules, regulations, codes, requirements, licenses, permits and authorizations.

iv. Validation and Certificates of Participation. The Validation shall have occurred and the Certificates of Participation shall have been issued and delivered with an average rate of interest not to exceed 7.5% and a final maturity (assuming substantially level debt service) of 30 years and in a par amount sufficient to generate proceeds to pay the Purchase Price and Close, and otherwise upon terms and conditions which are substantially similar to those terms and conditions of the prior issuance of certificates of participation by BUYER as more particularly described on **Schedule 7.a.iv** and otherwise materially consistent with and not in conflict with the laws of the State of Florida and BUYER's policies and procedures relating to financing, BUYER's financial plan and projections and BUYER's capital expense programs. For purposes of this Agreement, "Validation" means a final judgment shall have been issued by the Circuit Court in and for Palm Beach County validating the Certificates of Participation pursuant to Chapter 75, Florida Statutes and either (i) no timely appeal has been taken and the time for taking such appeal has expired or (ii) in the event of an appeal, such final judgment shall have been affirmed by the Florida Supreme Court and shall have become final and not subject to re-hearing or further appeal. "Certificates of Participation" are defined as certificates of participation evidencing undivided proportionate interests of the owners thereof in basic lease payments to be made by the Governing Board of BUYER, as lessee, pursuant to a Master Lease Purchase Agreement with the Leasing Corp., as lessor, in an aggregate amount, that, when combined with any other funds to be paid by BUYER at Closing, shall equal the Purchase Price.

v. BUYER's lender/financing trustee/credit enhancer/underwriter (the "Credit Provider") shall have approved the form of the Lease.

vi. All of the representations and warranties of SELLER contained in this Agreement, including but not limited to those contained in **Paragraph 12**, shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any

representation or warranty that is already qualified to a materiality standard).

vii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.

viii. Intentionally Deleted.

ix. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.

x. SELLER shall have funded the General Escrow Fund pursuant to the General Escrow Agreement, which shall be in form and substance attached hereto as **Exhibit 7.a.x** ("General Escrow Agreement").

xi. Performance. Each of the covenants, obligations and agreements to be performed by each of SELLER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).

xii. Closing Deliveries. SELLER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in **Section 11** that are to be delivered by SELLER or such other applicable party, each dated as of the Closing Date.

xiii. Board Resolutions; Incumbency Certificates. BUYER shall have received from each SELLER copies of (a) within forty-five (45) days after Validation, resolutions of (i) the Board of Directors (or comparable authoritative body) of such SELLER, and (ii) solely if SELLER determines that it will seek stockholder approval, the stockholders of such SELLER, authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of each SELLER, and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in **Section 7.a.xi** have been satisfied.

xiv. Legal Opinion. BUYER shall have received a legal opinion regarding the authority of SELLER to enter into this Agreement from SELLER's counsel in the form of **Exhibit 7.a.xiv**.

xv. The Parties hereto acknowledge that, concurrently with the Closing, BUYER intends to enter into a ground lease agreement with the South Florida Water Management District Leasing Corp. (the "Leasing Corp.") which will encumber BUYER's interest in the Premises in order to facilitate the issuance of the Certificates of Participation. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver a Non-Disturbance, Subordination and Attornment Agreement in form and substance reasonably acceptable to all of such parties (the "NDSA").

xvi. BUYER shall be satisfied in its sole and absolute discretion: (x) that the 1970 Policy has been issued; (y) that the Objections have been resolved; and (z) with any new matters set forth in any Title Updates or Survey Updates that have not already been approved or deemed approved by BUYER (i.e., matters other than the Objections).

xvii. The Closing Affidavit, if any, delivered by SELLER to BUYER pursuant to **Section 12.a.xvi.** shall be satisfactory to BUYER.

xviii. BUYER is satisfied that no events have occurred since the Effective Date, and no conditions existed as of the Effective Date which were unknown to BUYER, that would cause the amount of debt and debt service necessary to finance this transaction to adversely affect the financial capacity of BUYER to continue to fulfill its statutory, contractual and other legal obligations and mandates based on its historical and projected operations.

xix. The easements have been mutually agreed upon by the Parties pursuant to **Section 11.a.xii**.

xx. The Relocation Agreement has been mutually agreed upon by the parties thereto pursuant to **Section 19.j**.

b. Should any of the conditions precedent to Closing provided in **Section 7.a.** above fail to occur, then BUYER shall have the right, in BUYER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in **Section 15** of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.

c. In addition to all other conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in

this Agreement, the following shall be additional conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein:

i. All of the representations and warranties of BUYER contained in this Agreement, including but not limited to those contained in **Section 12** (but excluding BUYER's representation in Section 12.c.vi), shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).

ii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.

iii. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.

iv. Performance. Each of the covenants, obligations and agreements to be performed by BUYER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).

v. Closing Deliveries. BUYER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in **Section 11** that are to be delivered by BUYER or such other applicable party, each dated as of the Closing Date.

vi. Board Resolutions; Incumbency Certificates. SELLER shall have received from BUYER copies of (a) the resolution of the Governing Board of BUYER authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of BUYER (the "BUYER's Approval"), and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in **Section 7.c.iv.** have been satisfied.

vii. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the

Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver the NDSA.

viii. On or before forty-five (45) days after Validation, (A) the Boards of Directors for PARENT and each SELLING SUBSIDIARY shall have each (i) declared the transaction contemplated by this Agreement to be fair, advisable and in the best interests of its respective stockholders, and (ii) solely if SELLER determines that it will seek stockholder approval, recommended that their respective stockholders adopt this Agreement, presented this Agreement to their respective stockholders for approval, and, subject to stockholder approval, approved the consummation and performance of the transactions contemplated by this Agreement, and (B) solely if SELLER determines that it will seek stockholder approval, the stockholders of PARENT and each SELLING SUBSIDIARY shall have adopted this Agreement and approved the consummation of the transactions contemplated by this Agreement, in the case of both (A) and (B) above, in accordance with the applicable certificate or articles of incorporation and by-laws and applicable Law (collectively, the "SELLER's Approvals").

ix. BUYER's Credit Provider shall have approved the form of the Lease.

x. The easements have been mutually agreed upon by the Parties pursuant to **Section 11.a.xii.**

xi. The Relocation Agreement has been mutually agreed upon by the parties thereto pursuant to **Section 19.j**.

d. Should any of the conditions precedent to Closing provided in **Section 7.c**. above fail to occur, then SELLER shall have the right, in SELLER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in **Section 15** of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.

8. PRORATIONS, TAXES AND ASSESSMENTS

SELLER shall pay when due all real property taxes, (whether ad valorem or non-ad valorem) as well as all pending, certified, confirmed and ratified special assessment liens levied against the Premises through the Closing Date. From and after the Closing Date, the Lease provides that the tenant thereunder shall pay all real property taxes (whether ad valorem or non-ad valorem) accrued with respect to the Premises in accordance with Florida Statute 196.295.

9. CONVEYANCE

SELLER shall convey title to the Premises to the BUYER, by statutory warranty deed(s)

("Deed(s)") at Closing, in form and substance attached hereto as **Exhibit 9**.

10. OWNERS AFFIDAVIT/CONSTRUCTION LIENS; ENVIRONMENTAL ESCROW

a. At Closing, the SELLER shall furnish to the BUYER an Owner's Affidavit ("Owner's Affidavit"), in form and substance as attached hereto as **Exhibit 10.a**.

b. General Escrow Fund.

i. Provided that SELLER does not elect to fund the following escrow amounts with a General Letter of Credit as provided below, the Closing Agent shall hold in escrow (if Closing Agent is also the Escrow Agent) or deliver to Escrow Agent (if Escrow Agent is not the Closing Agent) the following amount at Closing (which shall be paid out of the Purchase Price): cash in an amount equal to FOUR MILLION AND NO/100 DOLLARS ($4,000,000.00) (the "General Escrow Fund"), which General Escrow Fund, if cash, shall be paid by wire transfer of immediately available funds to an interest bearing account designated by an Escrow Agent. The General Escrow Fund shall not be used for any purposes other than those set forth in **Section 10.b.ii**.

ii. The General Escrow Fund shall be held as security for: (w) any Environmental Claims that BUYER may have under this Agreement; (x) costs incurred by SELLER to perform Additional Remediation pursuant to **Section 21**; (y) payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate to BUYER pursuant to **Section 21**; and (z) satisfaction of all of SELLER's obligations as provided under the Lease (without limiting BUYER's other rights and remedies under this Agreement or the Lease). The General Escrow Fund shall be disbursed in accordance with the General Escrow Agreement. In addition, the General Escrow Fund shall be security for costs incurred by BUYER to complete Additional Remediation begun by SELLER, but which has not been timely completed by SELLER pursuant to **Section 21**, if SELLER has not met a Milestone in the Additional Remediation Schedule as a result of its failure to diligently pursue same.

iii. In the event that SELLER elects to fund all of the General Escrow Fund with a General Letter of Credit, as provided for below, then the cash to Close payable directly to SELLER shall be increased by the aggregate amount of any such General Letter of Credit.

iv. In lieu of cash proceeds from the Purchase Price being deposited as General Escrow Fund on the Closing Date, SELLER shall have the option (to be exercised no later than ten (10) days prior to Closing), to elect to post a letter of credit with Escrow Agent for all the General Escrow Fund

(the "General Letter of Credit"), which shall be held and drawn upon by Escrow Agent pursuant to the terms of the General Escrow Agreement and shall be substantially in the form attached hereto as **Exhibit 10.c.iv**, or otherwise in form and substance reasonably acceptable to SELLER and BUYER. The General Letter of Credit shall not be assignable or transferable to any transferees, successors or assigns of BUYER, and BUYER may not assign or transfer BUYER's power and authority to make any draws against the General Letter of Credit, except to the extent BUYER is permitted to assign this Agreement. If SELLER elects to post the General Letter of Credit, it shall: (i) be in the form of an irrevocable commercial letter of credit with a term of at least twelve (12) months, (ii) be issued by one or more of SELLER's lenders, under its revolving credit facility, naming Escrow Agent, as beneficiary, (iii) provide for draws as set forth below in this subsection, and (iv) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing General Letter of Credit that the bank elects that it not be renewed. If the General Letter of Credit is not timely renewed and SELLER has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent shall draw upon the same and hold it pursuant to the terms of the General Escrow Agreement, and the terms hereof related to the Escrow Agent shall be included in the General Escrow Agreement.

v. Notwithstanding anything in this Agreement to the contrary, SELLER shall be required to replenish the General Escrow Fund in the event any disbursements are made from the General Escrow Fund in accordance with the terms of this **Section 10** within fifteen (15) days after written notice of any such disbursement. Any failure by SELLER to replenish the General Escrow Fund within such fifteen (15) day period shall constitute an immediate default under this Agreement that shall not be subject to any further notice or cure period pursuant to **Section 15.c** hereof. SELLER's obligation to replenish the General Escrow Fund as provided herein shall survive as provided in the General Escrow Agreement.

vi. Payments shall be made from the General Escrow Fund in accordance with the General Escrow Agreement.

11. DOCUMENTS FOR CLOSING

a. At Closing, SELLER and BUYER, as applicable, shall execute and deliver (or cause to be executed and delivered) to each other the following documents and instruments:

i. the Deed;

ii. the Owner's Affidavit;

iii. the closing statement in form and substance reasonably acceptable to the Parties;

iv. a "bring-down" certificate from each of SELLER and BUYER stating that the representations and warranties of each respective Party contained in **Section 12** (excluding BUYER's representation in **Section 12.c.vi**) are true and correct;

v. the Lease;

vi. the NDSA;

vii. the General Escrow Agreement;

viii. an assignment and assumption of Tenant Leases, in form and substance as attached hereto as **Exhibit 11.a.viii**;

ix. all of the documents and instruments required to be delivered by SELLER pursuant to **Section 6.c.** of this Agreement;

x. an assignment and assumption of contracts, in form and substance attached hereto as **Exhibit 11.a.x** ("Assignment of Contracts");

xi. The Memorandum of Agreement;

xii. all other documents and instruments provided for under this Agreement, required by the Title Company or reasonably required by BUYER or SELLER to consummate the transaction contemplated by this Agreement, all in form, content and substance reasonably required by and acceptable to BUYER or SELLER, as may be applicable.

xiii. SELLER and BUYER shall execute and deliver easements, in form and substance reasonably acceptable thereto (and at the sole cost and expense of the Party requesting the applicable easement(s)) with respect to: (i) BUYER's right to use SELLER's railroad crossings; and (ii) either Party's right to maintain and relocate existing utilities and/or access over and across the Premises or SELLER's retained property if reasonably necessary for the continued use and operation thereof (it being agreed that the foregoing shall include a drainage easement, not to exceed 320 acres in area, in favor of SELLER's citrus processing plant for a term of five (5) years). The instruments described in clauses (i) and (ii) above shall be reasonably agreed upon prior to the Closing Date.

xiv. The Relocation Agreement.

b. The BUYER shall prepare or cause the Closing Agent to prepare a draft closing statement and submit it to SELLER at least ten (10) days prior to the scheduled Closing Date.

12. REPRESENTATIONS AND WARRANTIES

a. SELLER's Representations. As a material inducement to BUYER entering into this Agreement, SELLER represents and warrants to and covenants with BUYER that the following matters are true as of the Effective Date and that they will also be true as of Closing:

i. To SELLER's Knowledge, the description information concerning the Premises set forth in **Section 1** hereof is generally accurate, unless otherwise disclosed by the Title Binder or Survey, or any updates thereof.

ii. Except as set forth on **Schedule 12.a.ii(A)** or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, each applicable SELLER (a) owns fee simple record title to the Premises, and (b) there are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Premises or any portion thereof. Except for the leases set forth on **Schedule 12.a.ii(B)** (the "Tenant Leases") and the matters disclosed on **Schedule 12.a.ii(A)** or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, none of the Premises is subject to any lease or other occupancy agreements in favor of any third party.

iii. To SELLER'S Knowledge, SELLER is not in default, nor do any circumstances exist which would give rise to a default under any of the documents, recorded or unrecorded, referred to in the Title Commitment. Without limiting the foregoing, except as set forth on **Schedule 12a.iii**, SELLER has not received any written notice from the appropriate governmental entity (x) that SELLER is not in compliance with any Governmental Approval or (y) that SELLER is not in compliance with all applicable federal, state, county or other governmental laws, ordinances, regulations, licenses, permits and authorizations, including, without limitation, Environmental Laws (collectively, the "Laws"), relating to or in any way affecting the Premises that remains uncured as of the date hereof, except where the failure to so comply would not reasonably be expected to have a material adverse effect on the Premises.

iv. Except as specifically set forth in this Agreement or the Schedules to this Agreement, there are no facts or circumstances of which SELLER has

Knowledge that could reasonably be expected to have a material adverse effect on the Premises.

v. To the Knowledge of SELLER, **Schedule 12.a.v.** contains a true and complete list of the Governmental Approvals possessed by SELLER that are necessary to entitle or permit SELLER to own, lease and operate the Premises (the "Required Governmental Approvals") and the applicable SELLER set forth thereon is the authorized holder of each such Required Governmental Approval. To the Knowledge of SELLER, SELLER possesses all Required Governmental Approvals necessary to own and operate the Premises as they are currently owned and operated. Except as set forth on **Schedule 12a.iii**, SELLER has not received written notice that any Required Governmental Approval is not in full force and effect in the jurisdiction where it is required under applicable Laws.

vi. Except as set forth on **Schedule 12a.vi**, there is no pending, or, to SELLER's Knowledge, threatened judicial, county or administrative proceedings or any judgment, order, injunction, decree, consent decree, ruling, or writ of any governmental authority materially affecting the Premises or in which SELLER is or will be a party by reason of SELLER's ownership of the Premises or any portion thereof, including, without limitation, proceedings for or involving condemnations, eminent domain or zoning violations, or personal injuries or property damage alleged to have occurred on the Premises or by reason of the condition or use of the Premises. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending, or, to SELLER's Knowledge, threatened against SELLER. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, SELLER shall promptly advise BUYER in writing.

vii. The execution and delivery of this Agreement by SELLER has been, and subject to SELLER receiving the SELLER's Approvals, (i) all the documents to be delivered by SELLER to BUYER at Closing by SELLER, and (ii) the performance of the Agreement by SELLER, will be, duly authorized by SELLER. Assuming the due authorization, execution and delivery by BUYER of this Agreement, this Agreement will be binding on SELLER and enforceable against SELLER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than: (i) the SELLER's Approvals; (ii) any such consent which already has been unconditionally

given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by SELLER nor the consummation of the transactions contemplated hereby by SELLER will: (i) violate any court order, or violate or conflict with any contract or agreement to which SELLER is a party and the Premises is subject, except to the extent that such violation would not reasonably be expected to have individually or in the aggregate, a material adverse effect on the Premises or the transactions contemplated under this Agreement; or (ii) result in the creation or imposition of any lien (other than the Title Exceptions), with or without the giving of notice or the lapse of time or both, on any of the Premises.

viii. To SELLER's Knowledge, there are no facts or circumstances which would materially impair the continued use of the Premises for agricultural purposes employed by SELLER, in SELLER's ordinary course of business, consistent with past practices.

ix. As to the environmental condition of the Premises, except as disclosed by the BUYER's Environmental Assessment or as set forth on **Schedule 12.a.iii** or **Schedule 12.a.vi**:

(1) For purposes of this Agreement, pollutant ("Pollutant") shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by environmental laws. Disposal ("Disposal") shall mean Pollution as defined as **Section 376.301(37)** of the Florida Statutes Annotated (provided that for purposes of this **subsection 12.a.ix.(1)** "pollutants" in **Section 376.301(37)** of the Florida Statutes Annotated shall mean Pollutants as defined in this **subsection 12.a.ix.(1)**) and the release, storage, use, handling, discharge, or disposal of such Pollutants. Environmental laws ("Environmental Laws") shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment. Pesticides ("Pesticides") means any Pollutant defined as a pesticide under **Section 487.021(49)** of the Florida Statutes Annotated. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. Solely for purposes of this **subsection 12.a.ix.**, "Knowledge" shall be deemed to mean, with respect to SELLER, the actual knowledge of Peter Briggs, as environmental consultant of SELLER, and Edward Almeida (Vice President, Legal Affairs), all without imputation or attribution; provided however that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege.

(2) The SELLER has obtained, and has not received written notice of any violations under, any and all permits regarding the Disposal of Pollutants on the Premises or contiguous property owned by SELLER.

(3) The SELLER has no Knowledge of, nor has it received any written notice of, any past, present or future events, conditions, activities or practices which may give rise to any liability or form a basis for any claim, demand, cost or action relating to the Disposal of any Pollutant, or alleged violation of any Environmental Laws, on or under the Premises or on contiguous property.

(4) There is no civil, criminal or administrative action, suit, claim, demand, investigation or notice of violation pending, or to SELLER's Knowledge, threatened against the SELLER relating in any way to the Disposal of Pollutants, or an alleged violation of Environmental Law, on or under the Premises or on any contiguous property owned by SELLER.

(5) To the Knowledge of SELLER, all applications of Pesticide on or to the Premises by SELLER have been applications of a pesticide product registered under FIFRA if such application occurred after FIFRA had been enacted, and have been done in accordance with the instructions on the labels applicable to such Pesticides.

(6) To the Knowledge of SELLER, all applications of fertilizer on the Premises by SELLER have been "the normal application of fertilizer" within the meaning of **Section 101(22)(B)** of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Secs. 9601 et seq.;

(7) All determinations related to the status of any portion of the Premises as Prior Converted Cropland pursuant to the National Food Security Act Manual for the implementation of the Food Security Act of 1985 or the Clean Water Act (Final Rule, 58 FED. REG. 45,008, 45,034, August 25, 1993) that SELLER has received or possess are listed on **Schedule 12.a.ix.**; and to SELLER's Knowledge, true and correct copies of such determinations and documents and information related to Prior Converted Cropland status of any portion of the Premises have been provided to BUYER.

x. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. SBG is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida. SGGC is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida.

xi. Subject to the terms and conditions contained herein, SELLER shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in **Section 7** of this Agreement.

xii. SELLER shall promptly notify BUYER of any material change in any condition with respect to the Premises or of any event or circumstance which makes any representation or warranty of SELLER to BUYER under this Agreement untrue or misleading, or any covenant of SELLER under this Agreement incapable or less likely of being performed, it being understood that the SELLER's obligation to provide notice to BUYER under this subparagraph shall in no way relieve SELLER of any liability for a breach by SELLER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, SELLER has no Knowledge of any event or circumstance which makes any representation or warranty of BUYER under this Agreement untrue or misleading.

xiii. Except as set forth on **Schedule 12.a.xiii**, SELLER has made no other outstanding agreement for purchase and sale applicable to the Premises other than this Agreement.

xiv. To SELLER's Knowledge, all items delivered by SELLER pursuant to this Agreement (except for the Title Binder, Prior Surveys, Surveys, Title Updates (if any), Survey Updates (if any) or any information previously delivered by SELLER with respect to the SELLER's business or other assets other than the Premises), are and will be true, correct and complete in all material respects and fairly represent the information set forth therein and no such items omit to state information necessary to make the information contained therein or herein true and correct.

xv. Intentionally Deleted.

xvi. SELLER warrants that no person, individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, or other entity or group (hereinafter referred to as "Person") is entitled to a fee, consideration, real estate commission, percentage, gift, or other non-monetary consideration from SELLER (a) in connection with this Agreement or Related Agreements or the subsequent Closing, (b) as compensation contingent upon BUYER entering into this Agreement or

the Related Agreements or the subsequent Closing the contemplated transaction, or (c) to solicit or secure this Agreement or Related Agreements (hereinafter referred to as "Fees"), except as accurately disclosed on, or exempt from disclosure pursuant to the terms of, the Beneficial Interest and Disclosure Affidavit dated as of the date hereof and attached hereto and made a part hereof as **Exhibit 12.a.xvi**. ("Affidavit"). SELLER and BUYER agree that, if necessary, at closing SELLER may execute and deliver to BUYER an updated Affidavit dated the date of the Closing in order to disclose any Fees payable by SELLER to any Persons that arise during the time between the Effective Date and the Closing Date ("Closing Affidavit"). If SELLER determines that it will execute and deliver a Closing Affidavit, SELLER shall first deliver a draft of the Closing Affidavit to BUYER no later than ten (10) business days prior to Closing for BUYER'S review. BUYER'S satisfaction of the matters disclosed in any Closing Affidavit is a condition precedent to BUYER'S obligations to close the transactions contemplated by this agreement as provided in **subsection 7.a.xvii.** Except as provided under **subsection 19.h.**, SELLER shall pay all Fees, and SELLER shall indemnify and hold BUYER harmless from any and all claims for Fees, whether disclosed or undisclosed. Furthermore, if, prior to Closing, BUYER becomes aware that a Person is owed a Fee from SELLER and such Person is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, then BUYER shall have the right to (A) terminate this Agreement without thereby waiving any action for damages resulting from such nondisclosure, or (B) proceed to Closing and reduce the Purchase Price by the full amount of such Fee owed from SELLER to such undisclosed Person. If BUYER proceeds to Closing and the Fee owed to the undisclosed Person is a gift or other non-monetary consideration or benefit, then the Purchase Price shall be reduced by the fair market value of such gift or other non-monetary consideration or benefit. If, after Closing, BUYER becomes aware that a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, then BUYER may recover from SELLER the full amount of such Fee ("Post-Closing Recovery Amount"). If the Fee paid to such undisclosed Person is in the form of a gift or other non-monetary consideration or benefit, BUYER may recover the fair market value of such gift or other non-monetary consideration or benefit from SELLER. BUYER and SELLER hereby acknowledge and agree that if a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, and BUYER does not become aware of such undisclosed Fee until after Closing, it will be difficult to quantify and determine BUYER's damages, and therefore, BUYER and SELLER agree that the Post Closing Recovery Amount is a fair and reasonable liquidated damages amount, and not a penalty. The provisions of this **subparagraph**

12.a.xvi. shall survive the delivery and recording of the deed or other instrument pursuant to Section 18. The term "Related Agreements" means the Deed(s), the General Escrow Agreement, and the Lease.

xvii. With respect to each of the Tenant Leases, the following information is true and correct, except as may be otherwise set forth on Schedule 12a.xvii, (A) each of the Tenant Leases is in full force and effect on the terms set forth therein and has not been modified, amended, or altered, in writing or otherwise, and each tenant ("Tenant") under the Tenant Leases is legally required to pay all sums and perform all obligations set forth in the Tenant Leases (in accordance with the terms of the Tenant Leases), without other concessions, abatements, offsets, defenses or other basis for relief or adjustment; (B) all obligations of the SELLER, under the Tenant Leases which have accrued prior to Closing will be or have been performed, and no Tenant has asserted or, has any defense to, offsets or claims against, rent payable by it or the performance of its other obligations under its lease; SELLER has no outstanding obligation to provide any Tenant with an allowance to construct, or to construct at its own expense, any tenant improvements; (C) to SELLER's Knowledge, no Tenant is in default under or in arrears in the payment of any sums or in the performance of any obligation required of it under its Tenant Lease, and no circumstance exists which, with notice or the passage of time, or both, would give rise to a default, and no Tenant has prepaid any rent or other charges or given security deposits beyond the payment terms described in each Tenant Lease; (D) SELLER has received no written notice that any Tenant is or may become unable to or unwilling to perform any or all of its obligations under its lease, whether for financial or legal reasons or otherwise; (E) no guarantors of any of the Tenant Leases have been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation under or in connection with any of the Tenant Leases or any transaction related thereto; (F) SELLER has not applied and shall not apply any security deposit to rent due from any Tenant whose Tenant Lease shall not terminate prior to Closing; (G) the exclusive responsibility for all expenses connected with or arising out of the negotiation, execution and delivery of the Tenant Leases, including, without limitation, brokers' commissions, leasing fees and the cost of all tenant improvements have been paid; (H) after the Effective Date, SELLER shall neither execute any new lease for the Premises nor renew, modify or grant any material consent with respect to any existing Tenant Lease without BUYER's prior written consent, which consent may be withheld in BUYER's reasonable discretion; provided, however that in no event shall BUYER's consent be required if such new lease or renewal, modification or consent by SELLER with respect to an existing Tenant Lease is (i) consistent with SELLER's ordinary course of business and the term of such new lease or existing Tenant Lease which is being renewed, modified or for which SELLER's consent is being requested has a lease

term which expires on or prior to the term of the Lease or can be terminated by SELLER without penalty upon thirty (30) days notice; or (ii) otherwise contemplated by the terms of any such Tenant Lease; (I) no new Tenant Lease shall violate the terms of any of the existing Tenant Leases; (J) without the prior written consent of BUYER, which may be withheld in BUYER's sole and absolute discretion, SELLER shall not, prior to Closing, terminate any of the Tenant Leases unless such termination is in the ordinary course of SELLER's business, in which event no such consent is required; and (M) after the Effective Date, SELLER shall not enter into any contract or other agreement (other than a lease as provided for above) with respect to the Premises which will survive Closing and be binding upon BUYER or the Premises without BUYER's prior written consent, which consent may be withheld in BUYER's sole and absolute discretion.

xviii. Intentionally Deleted.

xix. The SELLER hereby represents and warrants that neither the Parent nor any Selling Subsidiary has received any written notice during the past three years from any insurance carrier regarding defects or inadequacies in the Premises wherein SELLER was notified that if not corrected would result in termination of insurance coverage or increase its insurance premium in any material respect.

xx. The SELLER hereby represents and warrants that **Schedule 12.a.xx** contains a list of all casualty, liability and workers' compensation insurance coverage (specifying the insured, insurer, amount of coverage, type of insurance and policy number), maintained by SELLER and relating to the Premises (the "Insurance Policies"), and copies of which have been made available to BUYER. To the Knowledge of SELLER, with respect to each such Insurance Policy: (i) such policy is valid and enforceable in accordance with its terms and is in full force and effect; (ii) none of SELLER are in material breach (including any such breach with respect to the payment of premiums or the giving of notice); (iii) no event has occurred which, with notice or the lapse of time, would constitute a material breach or permit termination or modification, under any such Insurance Policy; (iv) no notice of cancellation or termination of, or general disclaimer of liability under any such policy has been received by the applicable SELLER. As of the date hereof, no claims under the Insurance Policies are outstanding other than any claims that would not reasonably be expected to have a material adverse effect.

xxi. Other than as disclosed on the Affidavit, the SELLER hereby represents and warrants that SELLER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to

an valid claim against BUYER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.

xxii. Intentionally Deleted.

xxiii. The SELLER hereby represents and warrants that SELLER (on a consolidated basis) is Solvent and, after giving effect to the transactions contemplated hereby, will be Solvent. Each SELLER will receive valuable direct and indirect benefits as a result of the consummation of the transactions contemplated hereby and these benefits constitute "reasonably equivalent value" and "fair consideration" as those terms are used in the United States Bankruptcy Code, as amended (11 U.S.C., et seq.), or any other applicable bankruptcy law or state fraudulent transfer or conveyance statute, and the related case law. The term "Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair market value of the property of such Person is greater than the total amount of its liabilities, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liabilities of such Person on its debts (including, without limitation, its liabilities under this agreement, and its stated and contingent liabilities) as they become absolute and matured, (c) such Person has not incurred, does not intend to incur and does not believe that it will incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (d) such person has not made a transfer or incurred an obligation under this agreement with the intent to hinder, delay or defraud any of its present or future creditors, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its assets would constitute an unreasonably small capital.

xxiv. No representation or warranty by SELLER in this Agreement, and no statement made by SELLER in the Schedules hereto, or any certificate or other document prepared by SELLER and furnished or to be furnished to BUYER pursuant hereto, or in connection with the negotiation, execution or performance of this Agreement, contains or will at the Closing contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or therein or necessary to make any statement herein or therein not misleading (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).

b. The representations and warranties made in this Agreement by SELLER shall be continuing (subject to **Section 18**) and shall be deemed remade by SELLER as of Closing with the same force and effect as if in fact made at that time. SELLER shall be liable to BUYER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that BUYER incurs as a result of any warranty or representation made by SELLER in

this Agreement not being true and correct in all material respects as of the Effective Date and Closing Date (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard), all as and to the extent provided in **Section 15** and subsection (e) below. Notwithstanding anything to the contrary herein, but subject to subsection (e) below, the effect of the representations and warranties made in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by BUYER or its agents.

c. BUYER's Representations. As a material inducement to SELLER entering into this Agreement, BUYER represents and warrants to and covenants to SELLER that the following matters are true as of the Effective Date and that they will also be true as of Closing:

i. The execution and delivery of this Agreement by BUYER has been, and subject to BUYER receiving the BUYER's Approval and Validation, (i) all the documents to be delivered by BUYER to SELLER at Closing by BUYER, and (ii) the performance of the Agreement by BUYER, will be, duly authorized by BUYER. Assuming the due authorization, execution and delivery by SELLER of this Agreement, this Agreement will be binding on BUYER and enforceable against BUYER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than; (i) the BUYER's Approvals; (ii) any such consent which already has been unconditionally given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by BUYER nor the consummation of the transactions contemplated hereby by BUYER will violate any court order, contract or agreement to which BUYER is a party.

ii. Except as set forth in **Schedule 12.c.ii**, there is no pending, or, to BUYER's Knowledge, threatened judicial, county or administrative proceedings that would reasonably be expected to impair or delay the ability of BUYER to perform its obligations under this Agreement. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, BUYER shall promptly advise SELLER in writing.

iii. Subject to the terms and conditions contained herein, BUYER shall use its commercially reasonable efforts to take, or cause to be taken, all

appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Section 7 of this Agreement.

iv. BUYER shall promptly notify SELLER of any event or circumstance which makes any representation or warranty of BUYER to SELLER under this Agreement untrue or misleading, or any covenant of BUYER under this Agreement incapable or less likely of being performed, it being understood that the BUYER's obligation to provide notice to SELLER under this subparagraph shall in no way relieve BUYER of any liability for a breach by BUYER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, BUYER has no Knowledge of any event or circumstance which makes any representation or warranty of SELLER under this Agreement untrue or misleading; provided, however, this representation shall not be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.

v. BUYER hereby represents and warrants that BUYER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to an valid claim against SELLER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.

vi. Based upon the most recent projections of ad valorem tax revenues as promulgated by the State of Florida, Office of Economic and Demographic Research, in its report dated March 4, 2009, updated March 16, 2009, and BUYER's current ad valorem millage rates, BUYER represents that, to BUYER's Knowledge, it expects to be able to pay debt service on Certificates of Participation sufficient to pay the Purchase Price with an average rate of interest not to exceed 7.5% and a final maturity (assuming substantially level debt service) of 30 years. This representation is not continuing and BUYER is not required to update this representation at any time in the future, notwithstanding the provision of Section 12.d. hereof. BUYER makes no representation as to its ability to obtain financing for the transaction contemplated hereunder or its ability to issue Certificates of Participation as described herein.

d. The representations and warranties made in this Agreement by BUYER shall be continuing (subject to **Section 18**) and shall be deemed remade by BUYER as of Closing with the same force and effect as if in fact made at that time. BUYER shall be liable to SELLER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that SELLER incurs as a result of any warranty or representation made by BUYER in this Agreement not being true and correct in all material respects (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard) as of the Effective Date and Closing Date, all as and to the extent provided in Section 15 and subsection (c) below.

e. A representation or warranty will not be deemed to be untrue or incorrect on the Closing Date if such representation or warranty was originally true on the Effective Date and such representation or warranty thereafter became untrue for reasons other than the intentional or willful misconduct of the representing Party or due to events beyond the representing Party's reasonable control causing the same to be untrue, whereupon such representation or warranty shall be deemed to be conformed to such new circumstances, provided, however, that, in such event, the failure of such original (non-conformed) representation or warranty to be true and correct shall continue to be a condition precedent to Closing for the purposes of **Section 7.a.vi** or **Section 7.c. i**, respectively.

f. For purposes hereof, "Knowledge" shall be deemed to mean, (a) with respect to SELLER, the actual knowledge of the respective (i) Robert H. Buker, Jr., President and Chief Executive Officer, Gerard A. Bernard, Chief Financial Officer and Carl Stringer, Chief Information Officer of Parent, and Edward Almeida (Vice President, Legal Affairs), provided however, that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege, (ii) Ricke Kress, President of SGGC, and (iii) Malcolm S. (Bubba) Wade, Jr., Vice President of SBG, and (b) with respect to BUYER, the actual knowledge of Carol Wehle, Executive Director, Thomas Olliff, Assistant Executive Director, Kenneth Ammon, Deputy Executive Director, Tommy Stroud, Assistant Deputy Executive Director, Ruth P. Clements, Department Director, Land Acquisition, Abe Cooper, Senior Attorney, Sheryl Woods, General Counsel, Sarah Nall, Deputy General Counsel, Carlyn Kowalsky, Managing Attorney, Cathy Linton, Senior Attorney, and Kirk Burns, Senior Attorney, and Paul Dumars, Chief Financial Officer, all of BUYER, all without imputation or attribution, and provided, however, that the actual knowledge of any attorneys listed in this clause (b) shall exclude any information that is protected by a legal privilege.

g. Condition of Premises. BUYER hereby expressly acknowledges and agrees that, except as and to the extent expressly provided to the contrary in this Agreement, SELLER does not make, and has not made any warranty or representation whatsoever, express or implied, as to the condition or suitability of any portion of

the Premises for BUYER's intended use or otherwise (including, without limitation, NO WARRANTY OF MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT OR OTHER DEFECTS) all of which are expressly disclaimed by SELLER. BUYER has been afforded an opportunity to inspect the Premises prior to the Effective Date. Accordingly, to the extent that BUYER elects to Close under this Agreement, except as may be otherwise expressly set forth in this Agreement, including, without limitation, **Section 12** and, except with respect to Pollutants and other environmental matters, other than BUYER's performance of Remediation of Pollutants Identified in BUYER's Environmental Assessment and any other obligation of BUYER expressly set forth **Section 21** of this Agreement, whereby BUYER is not purchasing and accepting the Premises in an "as is" condition, BUYER shall be deemed to have purchased and accepted the Premises in its then current "as-is" condition at Closing without requiring any action, expense or other thing or matter on the part of the SELLER to be paid or performed.

13. INTENTIONALLY DELETED

14. EXPENSES

SELLER shall pay all State and County surtax and documentary stamps that are required to be affixed to the instrument of conveyance. All costs of recording the Deed(s), and all other Closing Documents to be recorded shall be paid by the SELLER. Intangible personal property taxes, if any, as well as any cost of recording corrective instruments, shall be paid by SELLER.

15. DEFAULT

a. SELLER's Default. If, after the expiration of any applicable cure period provided for below, the SELLER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then BUYER, as BUYER's sole remedies, shall have the right to seek (i) specific performance, and/or (ii) an action for actual damages; provided, however, nothing herein shall be deemed to limit BUYER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, BUYER shall not be entitled to seek, and in no event shall SELLER have any liability to BUYER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by BUYER, unless SELLER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of SELLER's willful and intentional default, in which event BUYER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach.

b. BUYER's Default. If, after the expiration of any applicable cure period provided for below, the BUYER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then SELLER, as SELLER's sole remedies, shall have the right to seek an action for actual damages; provided, however, nothing herein shall be deemed to limit SELLER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, SELLER shall not be entitled to seek, and in no event shall BUYER have any liability to SELLER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by SELLER, unless BUYER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of BUYER's willful and intentional default, in which event SELLER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach. Notwithstanding any term or provision of this Agreement to the contrary, but with full reservation by BUYER of the exceptions to or limitations on rights, damages or remedies of SELLER against BUYER or other persons provided for herein, the Parties acknowledge and agree that in the event of (i) a breach by BUYER of (x) the representation made by it in **Section 12.c.vi** or (y) **Section 12.c.iii** relating to the conditions precedent set forth in **Section 7.a.iv.** and/or **Section 7.a.xviii** or (ii) wrongful termination of this Agreement by BUYER under **Section 7.b.** relating to the conditions precedent set forth in (x) **Section 7.a.iv** or (y) **Section 7.a.xviii** that is proven by Seller in a litigation proceeding initiated under **Section 20** hereof, SELLER shall not seek to recover nor shall SELLER be entitled to recover and BUYER shall not be obligated to pay to SELLER as a result of any judgment, order or decree entered by the court in any such proceeding, whether as damages, interest, costs, attorney's fees or otherwise and separately or in the aggregate and regardless of the basis of any such claim, the theory of recovery, the nature of the alleged act or omission causing or producing such breach or the cause(s) of action alleged in any such litigation proceeding or action more than Five Million Dollars ($5,000,000).

c. Default Notice. In all cases (other than the failure of BUYER or SELLER to execute and deliver the items or funds required to be executed and/or delivered by same at Closing), each party shall, prior to exercising any remedy for a default hereunder, give the other party advance written notice of the acts or omissions alleged to have constituted a default. The party receiving such default notice shall have fifteen (15) days after receipt of such notice to cure the default, if any; provided, however that if such default cannot with due diligence be remedied by the defaulting party within said fifteen (15) day period, so long as the defaulting party commences to remedy such default within said fifteen (15) day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such failure shall be extended so long as such defaulting party prosecutes such remedy with reasonable diligence. Notwithstanding the foregoing: (a) in no event shall any cure period be deemed or permitted to extend the scheduled Closing Date pursuant to **Section 4**; and (b) from and after

Closing, SELLER and BUYER shall be obligated to cure any monetary defaults within thirty (30) days after receipt of written notice thereof from the other Party. If such default is not cured within such applicable period, then the parties may exercise any remedies set forth in this Agreement to the extent applicable to the subject act or omission.

d. Nonmaterial Default. Notwithstanding anything contained herein to the contrary, in no event shall either Party have the right to terminate this Agreement for a nonmaterial default or breach by the other Party.

16. RIGHT TO ENTER

a. The SELLER agrees that from the Effective Date through the Closing Date, all officers, employees, contractors and agents of the BUYER shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863) 902-2120 the right to enter upon the Premises for all proper and lawful purposes, including but not limited to inspection, investigation, examination of the Premises and the resources upon it; provided however that: (a) any such contractors or agents provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name the appropriate SELLER as an additional insured thereunder; and (b) all such inspections, investigations and examinations by BUYER or BUYER's officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of the SELLER or its business or its tenants and occupants; and (iii) at all times to comply with all of SELLER's' or its tenants' safety standards and requirements.

b. BUYER agrees to be responsible for: (x) any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while such Persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, SELLER's exclusive remedy shall be limited to compensation from BUYER in the amount of $2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre; (y) to the extent found legally responsible, any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from BUYER's or its officers', employees', contractors' and agents' inspections of or access to the Premises. BUYER shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that BUYER has the legal authority to agree to be responsible for the acts of its

officers, employees, contractors and agents". SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, legal authority to agree to the provisions of this **Section 16(b)**. The provisions of this **Section 16(b)** shall survive the Closing or any termination of this Agreement for a period of one (1) year.

17. RISK OF LOSS AND CONDITION OF REAL PROPERTY

a. SELLER assumes all risk of loss or damage to the Premises prior to the Closing Date. However, in the event the condition of the Premises is materially altered by a fire, casualty, disease, act of God or other natural force beyond the control of SELLER, BUYER may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement. In the event BUYER elects not to terminate this Agreement, the Purchase Price shall not be reduced and any casualty insurance proceeds shall be assigned by SELLER to BUYER (it being understood that in no event shall the foregoing include any business loss/interruption insurance proceeds, which shall remain the property of SELLER).

b. In the event all or any material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking and either Party may, within twenty (20) business days after receipt of such notice, elect to terminate this Agreement by delivery of written notice to the other. If neither Party elects to exercise its option to terminate this Agreement as aforesaid, this Agreement shall remain in full force and effect, the Purchase Price shall not be reduced and both SELLER and BUYER shall be entitled to negotiate for, settle and receive any award relating to such taking, and, at Closing, SELLER shall assign to BUYER all of its rights thereto relating to the Premises, provided, however, that SELLER shall retain any separately awarded claims for the loss of its leasehold interest. In the event a non-material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking; provided, however, that neither Party shall have the right to elect to terminate this Agreement or reduce the Purchase Price and this Agreement shall remain in full force and effect, with SELLER and BUYER thereupon entitled to negotiate for, settle and receive any award relating to such taking. Notwithstanding anything contained herein to the contrary, BUYER shall not be entitled to receive any award until such time as Closing occurs, whereupon BUYER shall receive a credit against the Purchase Price for any portion of the award allocated to BUYER.

18. SURVIVAL

The covenants, warranties, representations, indemnities and undertakings of SELLER and BUYER set forth in this Agreement, shall survive the Closing for a period of

two (2) years following the Closing Date, except as otherwise expressly provided in this Agreement, with the express understanding that **Section 5(i)** (Quitclaim Deeds), **Section 21** (Environmental Matters), **Section 12(a)(xvi)** (Beneficial Interest), **Section 15** (Default) **Section 26** (Option to Purchase Real Property), **Section 27** (Right of First Refusal), **Section 28** (Miscellaneous), as applicable, and other provisions relating to the Option and Right of First Refusal, shall indefinitely survive except as otherwise expressly provided in each such Section.

19. SPECIAL CLAUSES.

a. Radon Gas Disclosure. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

b. Delivery of Information. If BUYER terminates this Agreement at any time, then, within ten (10) days thereafter, BUYER shall deliver to SELLER copies of all final, inspection reports, test results and studies prepared for it regarding the Premises, but such delivery shall be without representation or warranty from BUYER of any kind, shall at all times be subject to the rights of the professionals and other preparers of such inspection reports, test results and studies, and BUYER shall have no liability whatsoever to any Person in connection with such inspection reports, test results and studies. In connection with BUYER's delivery to SELLER of the copies described above, SELLER shall be responsible to pay for the duplication costs customarily charged by BUYER in connection with the same.

c. Intentionally Deleted.

d. Intentionally Deleted.

e. Lease Back of the Premises. At Closing, BUYER (as Landlord) and SELLER (as Tenant) shall execute (i) one (1) lease with respect to the portion of the Premises allocated to the sugar operations of SELLER (it being agreed that the non-sugar cane portions of the Premises as described on **Exhibit 19.e-1** shall not be subject to the Lease), and (ii) one (1) lease with respect to the portion of the Premises allocated to the citrus operations, such that the entirety of the Premises (excluding the portions of the Premises described in **Exhibit 19.e-1**) are leased back to SELLER, both of which leases shall be in substantially the same form as attached hereto and made a part hereof as **Exhibit 19.e-2**, as approved by the BUYER's Credit Provider, and conformed to just reflect terms applicable to each leased portion of the Premises (e.g., rent, security deposits, etc.) ("Lease"). The

"Commencement Date" set forth in the Lease shall be the same as the actual Closing Date.

f. Tenant Leases and Estoppels.

i. Prior to the Effective Date, SELLER has obtained estoppel certificates from some or all of the Tenants, the form and substance of which estoppels are acceptable to BUYER. In connection therewith, SELLER shall use reasonable good faith efforts to obtain (A) renewals of such estoppels and (B) estoppels from any new tenants in the form attached hereto as **Exhibit 19.f.ii**, no later than ten (10) days prior to the Closing Date.

ii. In the event that, prior to Closing: (a) SELLER amends or modifies any Tenant Lease, the term of which extends beyond the Lease Termination Date, then SELLER shall use commercially reasonable efforts to incorporate language into such amendment or modification that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as **Exhibit 19.f.ii** upon request of the landlord thereunder; and (b) SELLER renews a Tenant Lease (and which renewal is in SELLER's discretion to do so) or enters into a new lease, the term of which extends beyond the Lease Termination Date and is permitted pursuant to the terms of this Agreement, then SELLER shall incorporate language in such renewal or new lease that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as **Exhibit 19.f.ii** upon request of the landlord thereunder.

iii. On or before Closing, Seller shall use commercially reasonable efforts to modify those certain Tenant Leases, if any, which lease any portion of the Premises to grow sugar cane or citrus, so that the lessees thereunder will be obligated from and after the Closing Date to comply with the same Best Management Practices (as defined in the Lease) that SELLER will be obligated to comply with under the Lease.

g. Intentionally Deleted.

h. Fees and Costs. Except as otherwise specifically provided herein, each Party shall bear its own fees and costs, notwithstanding fee payments provided under Chapter 73, Florida Statutes (to the extent applicable), incurred by such Party in connection with the transaction contemplated by this Agreement.

i. Intentionally Deleted.

j. Relocation of Railroad Track. SELLER will not transfer to BUYER: (i) assets of the internal and external railroad system owned by Parent or South Central Florida

Express, Inc. ("SCFE") ((including without limitation railroad assets, trackage, sidings, elevators, facilities and improvements, and railroad rolling stock) (collectively, the "Railroad System"); (ii) any and all rail common carrier rights, duties, and obligations, if any, it presently has; or (iii) any assets, property rights or other rights or privileges necessary to satisfy SELLER's common carrier duties and obligations of SCFE, if any. BUYER is not a rail common carrier and will not purchase, acquire, assume or otherwise receive any rights, duties or obligations of a rail common carrier in this transaction. SELLER will retain the Railroad System, and any and all common carrier rights, duties, and obligations it presently has, including, without limitation, the common carrier duties and obligations of SCFE. In the event that BUYER reasonably determines that it is necessary to relocate any portion of the Railroad System located within the boundaries described in Schedule 19.j attached hereto (the "Relocation Area") in order to construct BUYER's project, SELLER, SCFE and BUYER shall cause such relocation pursuant to the terms of a relocation agreement (the "Relocation Agreement"), the form of which shall be mutually agreed upon by the Parties and SCFE in their reasonable discretion prior to Closing and executed, delivered and recorded at Closing. Such relocation agreement shall provide, among other things: (a) BUYER, at it sole cost and expense, shall construct the relocated track (which shall include, without limitation, the bed, the ballast, the ties, the rail and any adjacent service roads, sidings, elevators or other appurtenant facilities, if applicable); (b) the relocated track shall be in a location reasonably acceptable to SELLER, SCFE and BUYER; (c) SELLER and/or SCFE, as applicable, shall convey the underlying fee to BUYER, in its "as is" condition, of the track being abandoned in exchange for BUYER's construction and conveyance of the new track and the underlying fee to SELLER, which underlying fee shall be conveyed by BUYER in its "as-is" condition; and (d) the new track must be completed in accordance with all applicable Laws before the conveyance of the abandoned track will occur. Notwithstanding the foregoing, in no event shall BUYER be obligated to relocate any portion of the internal railroad system located within the Relocation Area if such portion "dead-ends" (i.e., does not connect to any other portion of the Railroad System but ends at a portion of the Premises which will be used for BUYER's project) and, in such event, SELLER shall convey to BUYER such "dead-end" portion of the Railroad System that is to be used for BUYER's project for no consideration and, at SELLER's option, SELLER may remove and/or leave any portion of the Railroad System in connection with such conveyance.

k. Relocation Rights. In consideration of the negotiated Purchase Price and solely to the extent applicable, SELLER hereby waive any rights or claims they may have under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 U.S.C. § 4601 et seq.).

l. Cooperation. From the Effective Date hereof through the expiration of the Lease, SELLER shall cooperate in good faith with BUYER's credit enhancers and rating agencies to provide information related to the Premises (and not the SELLER's business or other assets) and necessary for the original issuance or refinancing of

the Certificates of Participation, so long as such credit enhancers and rating agencies execute and deliver to SELLER a confidentiality agreement reasonably acceptable to SELLER. BUYER shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by SELLER in providing the information pursuant to this Section (e.g., copying fees, but not including attorneys' fees incurred by SELLER in connection with such requests).

m. Conduct of SELLER. Except (i) as may be approved in advance by BUYER in writing, or (ii) as is otherwise required by this Agreement, during the period from the date of this Agreement until the earlier of (x) the Closing Date, and (y) the date this Agreement is terminated in accordance with its terms: (A) SELLER shall use commercially reasonable efforts to maintain the Premises (including, without limitation, pumps, culverts, canals, ditches and other irrigation and drainage infrastructure) according to the ordinary course of business consistent with past practices, (B) to the extent that Closing has not yet occurred, commence and continue through Closing the applicable sugar and citrus farming operations, all as and to the extent applicable and typically performed by SELLER in the ordinary course of business consistent with past practices and (C) in addition to, and not in limitation of the covenants set forth in the foregoing clauses (A)-(B) of this paragraph, none of SELLER shall, directly or indirectly, do any of the following:

i. Sell or otherwise dispose of any of the Premises or incur or assume any new indebtedness that would affect the Premises (except SELLER may encumber the crops); provided, however that SELLER may refinance any existing indebtedness, so long as the same is released at Closing with respect to the Premises;

ii. fail to renew, maintain in full force and effect or comply with any material Required Governmental Approvals related to the Premises of any SELLER (provided, that in no event shall the foregoing be deemed to require SELLER to perform any actions or expend any money in excess of what SELLER has customarily performed or expended in SELLER's ordinary course of business consistent with past practices), provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued;

iii. fail to promptly and timely pay and discharge all federal income taxes, real property taxes and assessments (provided that SELLER shall retain the right to challenge or appeal such taxes and assessments), levied or imposed upon, or required to be withheld by, or otherwise owing by, any of SELLER or with respect to the Premises;

iv. fail to comply with all applicable Laws (other than Required Governmental Approvals which is governed by subsection ii. above) with

respect to the ownership or operation of the Premises, to the extent SELLER has complied with the same in the ordinary course of business consistent with past practices, provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued; and

v. fail to maintain and continue in full force and effect the Insurance Policies or substantially equivalent policies, make any material adverse changes in the type or amount of coverages or permit any of the Insurance Policies or substantially equivalent policies to be canceled or terminated.

Notwithstanding anything contained to the contrary in this **Section 19(m)** or otherwise in the Agreement, in no event shall SELLER have any contractual obligation or liability to BUYER under this Agreement to perform any work or expend any money in connection with any matters disclosed by that certain Initial Assessment Report for Facilities in Crop Areas prepared for BUYER by Shaw Environmental, Inc. dated September 26, 2008 or otherwise; it being understood and agreed that from and after the Effective Date through Closing, SELLER shall perform its customary maintenance of the Premises, consistent with past practices, as SELLER reasonably determines is necessary for the continued operation of the Premises in connection with its farming operations. Provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.

n. Intentionally Deleted.

o. Binding Contract. In addition to the Title Exceptions, BUYER acknowledges and agrees that the conveyance of the Premises from SELLER to BUYER shall be subject to the following binding contract: That certain Purchase and Sale Agreement, as amended, (the "RCP Agreement") dated as of August 30, 2005 between Parent, as seller, and Resource Conservation Properties, Inc., as BUYER, for approximately 502 acres of real property located in the City of Clewiston (the "RCP Agreement Property"). Prior to the Closing, Parent may sell any of the RCP Agreement Property pursuant to the terms of the RCP Agreement and retain all of the proceeds from such sale(s) whereupon such portion of the RCP Agreement Property conveyed shall not be deemed to be part of the Premises. To the extent that all of the RCP Agreement Property is not sold prior to the Closing Date, then, on such date, Parent shall convey title to the RCP Agreement Property to BUYER and assign all of its rights in and to the RCP Agreement to BUYER as part of the Assignment of Contracts and BUYER shall assume the obligations thereunder from and after Closing. In the event that, at the Closing, BUYER simultaneously transfers the RCP Agreement Property to the City of Clewiston, BUYER shall have the option to direct Parent to assign the RCP Agreement directly to a third-party so long as such third-party agrees to

assume the same, which assignment and assumption shall be in the same form as the Assignment of Contracts.

p. Appraisal(s). Prior to the execution of this Agreement, BUYER has obtained an appraisal(s) that is in an amount and in a form acceptable to, and complies with the statutorily mandated appraisal standards as determined by, BUYER, in its sole and absolute discretion (the "Appraisal(s)").

q. Intentionally Deleted.

20. DISPUTE RESOLUTION PROCEDURES.

a. Negotiation by the Parties. If a dispute arises between BUYER on one hand and any or all of SELLER on the other hand, executives of both Parties shall meet at a mutually acceptable time and place within ten (10) days after delivery of notice of such dispute and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to negotiate resolutions of the dispute. If the matter has not been resolved within ten (10) days from the referral of the dispute to the executives, either Party may initiate mediation as provided hereinafter.

b. Mediation.

i. If the dispute has not been resolved by the negotiation as provided above, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a non-binding mediation proceeding by a request in writing to the other Party; thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted at a mutually agreeable location in West Palm Beach, Florida.

ii. If the Parties have not agreed within ten (10) days of the request for mediation on the selection of a mediator willing to serve, Buyer will provide a list of five (5) independent mediators from which SELLER shall choose a mediator.

iii. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a written settlement is reached, the mediator concludes and informs the Parties in writing that further efforts would not be useful, the Parties agree in writing that an impasse has been reached, or a Party commences litigation in accordance with **Section 20.c**. Neither Party may withdraw before the conclusion of the proceeding unless litigation is commenced pursuant to the provisions of **Section 20.c.** or either Party has elected to terminate this Agreement in accordance with the terms of this Agreement.

iv. In case of violation of the aforesaid obligation to mediate by either Party, the other Party may bring an action to seek enforcement of such obligation in the courts specified in **Section 28.d**.

c. Litigation.

If the dispute has not been resolved by mediation as provided in **Section 20.b.** above within forty-five (45) days of the initiation of such mediation procedure, either Party may initiate litigation upon five (5) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this **Section 20**, and the other Party has failed to participate, the requesting Party may initiate litigation before expiration of the above period. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the courts specified in **Section 28.d**.

d. Confidentiality.

To the extent allowed by Law, all negotiations, settlement agreements and/or other written documentation pursuant to this **Section 20** shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

e. Costs of Dispute Resolution.

Each Party shall bear its own fees and expenses with respect to the dispute resolution procedures and BUYER and SELLER shall each pay fifty percent (50%) of the fees and expenses of any mediator used under **Section 20(b)** above.

21. ENVIRONMENTAL MATTERS.

a. Certain Definitions.

i. "Action" means any action, cause of action, litigation, claim, demand, suit, arbitration, investigation or proceeding, whether civil, criminal, administrative, investigative or appellate, in law or at equity, by any Person or before any Governmental Body.

ii. "Additional Remediation" means Remediation in response to an Additional Remediation Notice identified in **Section 21.c.** that is delivered by BUYER to SELLER.

iii. "Additional Remediation Notice" means written notification to SELLER from BUYER that BUYER has learned of a Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida

Administrative Code, on or before the Lease Termination Date, but which was not identified in Buyer's Environmental Assessment, which notice shall describe the factual and legal basis of such Release in reasonable detail (taking into account the information then available to BUYER), including, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and which will state that it is being provided under Section 21.c.i. of this Agreement.

iv. "Additional Remediation Schedule" means a schedule for the performance of Additional Remediation, which schedule shall be consistent with any and all applicable requirements of Environmental Law, shall identify the steps SELLER will take to obtain the Government Confirmation within seven (7) years of BUYER's delivery of its Additional Remediation Notice to SELLER, except for any Additional Remediation for which BUYER consents in writing to a longer period, and shall identify the Milestones.

v. "Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person. The term "control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

vi. "BUYER's Environmental Assessment" means the Environmental Due Diligence Investigation Reports of the Premises prepared by or through Professional Service Industries, Inc., including all observations, findings, cost estimates, conclusions, data, risk evaluation, statistical evaluation and geospatial analyses and interpolation, tables, figures, appendices, maps, graphs, and charts, contained therein, as follows:

- Volume I, Executive Summary, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume II, Phase I Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume III, Phase II Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume IV, Ecological Risk Assessment to Support the Phase I and

Phase II Environmental Site Assessment of the United State Sugar Corporation Properties, prepared for Professional Service Industries, Inc. by Newfields, dated November 21, 2008;

- Volume V, Asbestos Survey, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008.

vii. "BUYER Indemnified Parties" means BUYER and its Affiliates and each of their respective officers, officials, directors, employees, partners, trustees, members, agents, and representatives, but does not include any of BUYER's successors in title to any portion of the Premises.

viii. "Cleanup Target Level" means:

For all areas: shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all environmental media other than groundwater, shall be the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or leachability based on groundwater criteria, or an alternative leachibility standard approved by the FDEP; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II of Chapter 62-777 of the Florida Administrative Code, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL. A Cleanup Target Level may be achieved with the use of (1) a site specific risk assessment conducted pursuant to, as applicable, Chapter 62-770, 62-730, or 62-780 of the Florida Administrative Code; (2) Institutional Controls and/or Engineering Controls; and/or (3) natural attenuation, as follows: (a) with regard to the use of Institutional Controls, BUYER hereby consents to restrictions that prohibit residential land uses, while allowing agricultural, commercial and industrial land uses, including, but not limited to, as classified by the North American Industry Classification System, United States, 2002 ("NAICS") and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004, (b) with regard to a site specific risk assessment, and other Institutional Controls, the BUYER provides its consents to the use of same (which consent shall not be unreasonably withheld) after the Effective Date, (c) with regard to natural attenuation, the BUYER consents to same (which consent shall not be unreasonably withheld) after the

Effective Date and FDEP concludes that it is reasonably likely to achieve the applicable Cleanup Target Level within five (5) years after Closing or within a longer period of time which is technically justifiable and is agreeable to FDEP, and (d) with regard to Engineering Controls, the FDEP and the BUYER, in its sole and absolute discretion, approve of the same after the Effective Date.

BUYER agrees that the Cleanup Target Levels (SCTL, GCTL, and FSCTL), applicable herein for those matters subject to Remediation by BUYER pursuant to Section 21.b. **(Remediation of Matters Identified in BUYER's Environmental Assessment)** are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect at the time of BUYER's Environmental Assessment. For Remediation pursuant to Section 21.c. the Cleanup Target Levels are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect when the Additional Remediation is performed. If no Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 are in effect, then the applicable Cleanup Target Levels shall be the successors thereto.

ix. "Direct Claim" means a bona fide claim for indemnification that is made in good faith by an Indemnified Party and is based on facts that can reasonably be expected to establish a valid claim under Section 21.e. or Section 21.f. of this Agreement.

x. "Direct Claim Notice" means written notification of a Direct Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such Direct Claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.

xi. "Engineering Controls" means the use of modifications to a site to reduce or eliminate the potential for migration of, or exposure to Pollutants.

xii. "Environmental Claim" means a claim asserted under Section 21.e.

xiii. "Environmental Notice" means written notification of an Environmental Claim to SELLER from a Buyer Indemnified Party, which describes the factual and legal basis of such Environmental Claim in reasonable detail (taking into account the information then available to BUYER Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all material notices, pleadings, documents, environmental reports and sampling data, and all other material written

evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by Buyer Indemnified Party.

xiv. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinance, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment.

xv. "Environmental Standard" means for the Release of Pollutants, for all areas, shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all other environmental media other than groundwater, the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or, leachability based- on- groundwater; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II for a Pollutant, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL.

xvi. "Final Remediation Cost Estimate" means the BUYER's good faith estimate of the cost of Additional Remediation to achieve the Cleanup Target Level for a Release of Pollutants not Identified in BUYER's Environmental Assessment and the techniques that can be used to perform the Additional Remediation.

xvii. "Governmental Body" means any (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, domestic, foreign, supranational or other government; or (iii) governmental, quasi-governmental, regulatory authority, agency, court, commission or other entity exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of or pertaining to government.

xviii. "Governmental Confirmation" means a Site Rehabilitation Completion Order issued either by FDEP or a local agency if FDEP has delegated such authority to that local agency.

xix. "Indemnified Party" means any Person claiming indemnification under any provision of Section 21.e. or 21.f.

xx. "Indemnifying Party" means any Person against whom a claim for indemnification is being asserted under any provision of **Section 21.e. or 21.f.**

xxi. "Identified in BUYER'S Environmental Assessment" means locations of Point Source of Pollutants found, as well as Non-Point Source of Pollutants, as described in the BUYER'S Environmental Assessment, which were detected either (a) as the result of the collection of soil, sediment, groundwater and/or surface water samples, or (b) determined as the result of interpolation or geospatial statistical analyses of said data.

xxii. "Institutional Controls" means the restriction on use or access to eliminate or minimize exposure to Pollutants. Such restrictions may include deed restrictions, restrictive covenants, and conservation easements.

xxiii. "Laws" means, as to any Person, any law (including common law), regulation, rule, statute, treaty, code, ordinance, order, judgment, or decree, or any other determination or requirement of (or agreement with) a Governmental Body applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

xxiv. "Lease Termination Date" means the earlier of (a) the "Expiration Date" (as defined in the Lease) or (b) the date that SELLER vacates all or a portion of the Premises, from time to time, with respect to the portion vacated, or assigns the Lease to an unaffiliated third party, with respect to the portion of the Premises so assigned.

xxv. "Liability" means any indebtedness, liability, obligation, commitment, guaranty, claim, loss, damage, penalty, fine, payment, deficiency, cost or expense (including, but not limited to, reasonable attorneys' fees and expenses, court costs and other reasonable costs of defense, including expert consultant and witness fees and costs) of any nature or kind, and whether the amount is known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, disputed or undisputed and whether due or to become due.

xxvi. "Milestones" means dates on which specific elements of the Additional Remediation will be completed as identified in the FDEP approved Remedial Action Plan.

xxvii. "Non-Governmental, Unrelated Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto, an Affiliate of a Party hereto, a successor in title of Buyer to the Premises, or a Governmental Body), in either case that can reasonably be expected to give rise to a right of indemnification for any BUYER Indemnified Party.

xxviii. "Non-Point Source of Pollutants" shall mean: (a) the wide spread presence of Pollutants in soil in cultivated fields which resulted from the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6); (b) with regard to phosphorus and nitrogen in soils or groundwater, the wide spread presence of Pollutants in cultivated fields which resulted from the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4); and (c) ambient agricultural contamination in cultivated fields in association with the normal application of fertilizer.

xxix. "Offsite Environmental Liabilities" means any Liabilities that arise out of or relate to either directly or indirectly or that result in whole or in part from the arrangement for disposal off of the Premises, or transportation by the SELLER of, any Pollutants generated or used in connection with the Premises on or prior to the Lease Termination Date.

xxx. "Person" means any natural person, corporation (including any non-profit corporation), general or limited partnership, limited liability company, proprietorship, other business organization, trust union, association, organization, other entity or Governmental Body.

xxxi. "Point Source of Pollutants" means a Release of Pollutants, but does not include a Non-Point Source of Pollutants.

xxxii. "Pollutant Liabilities" means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from the presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date.

xxxiii. "Pollutants" shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by Environmental Laws.

xxxiv. "Previously Unknown Pollutant Liability" means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Section 21.a.xxxiv.**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Section 21.a.xxxiii** of this Agreement) and the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date, except for (a) any such Liabilities arising out of Non-Point Source of Pollutants or Point Source of Pollutants identified in the BUYER'S

Environmental Assessment, (b) any such Pollutants for which Buyer Indemnified Parties have not submitted an Environmental Notice under **Section 21.b. or Section 21.c.i.**, any such Pollutants for which BUYER has not breached its obligation under **Section 21.b. or Section 21.c.ii.2.**, or both.

xxxv. "Release" means Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Section 21.a.xxxv.**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Section 21.a.xxxiii** of this Agreement) and any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water, but shall not include (i) the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6), (ii) the contamination of groundwater or surface water which is the result of the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4), or (iii) a Non-Point Source of Pollutants.

xxxvi. "Remediation" means those steps taken, or that will be taken, to achieve the applicable Cleanup Target Level and obtain Governmental Confirmation.

xxxvii. "SELLER Indemnified Parties" means PARENT, the SELLING SUBSIDIARIES, their respective Affiliates and each of their respective officers, officials, directors, employees, partners, stockholders, trustees, members, agents and representatives.

xxxviii. "Third Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto or an Affiliate of a Party hereto), in either case that can reasonably be expected to give rise to a right of indemnification for any Indemnified Party from an Indemnifying Party.

xxxix. "Third Party Claim Notice" means a written notification of a Third Party Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.

b. Remediation of Matters Identified in BUYER'S Environmental Assessment BUYER has performed BUYER's Environmental Assessment and performed sampling in those areas of the Premises where BUYER identified concerns regarding the likely presence of Pollutants. BUYER's Environmental

Assessment has revealed the presence of Pollutants. In exchange for the payment of EIGHT MILLION SIX HUNDRED THOUSAND AND NO/100 U.S. DOLLARS ($8,600,000.00) by SELLER at closing, BUYER shall perform the Remediation of the Pollutants Identified in the BUYER'S Environmental Assessment as required by Environmental Laws as the Person Responsible for Site Rehabilitation ("PRSR"), and secure all applicable Governmental Confirmations with respect thereto and SELLER, except as provided in **Section 21.c.** below, shall thereafter have no obligation or liability to BUYER to perform Remediation of the Pollutants Identified in the BUYER's Environmental Assessment.

c. Remediation of Point of Source Pollutants

i. If after the Effective Date BUYER learns of any Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida Administrative Code, on or before the Lease Termination Date, but which was not Identified in BUYER's Environmental Assessment, and BUYER provides an Additional Remediation Notice to SELLER on or before three (3) years after the Lease Termination Date, the provisions of this **Section 21.c.** shall apply. If within forty-five (45) business days of receipt of the Additional Remediation Notice, SELLER delivers written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, either SELLER or BUYER may initiate dispute resolution procedures as provided in **Section 20**. If within forty-five (45) business days after SELLER's receipt of the Additional Remediation Notice from BUYER, which must be delivered in accordance with **Section 24**, SELLER does not deliver written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, then, in that event, SELLER will not subsequently dispute its liability in connection with such notice. Unless the dispute resolution procedures are initiated as set forth above, within fifty (50) business days of receipt of the Additional Remediation Notice by SELLER, BUYER and SELLER shall meet to attempt to reach agreement concerning the reasonably estimated aggregate cost of Additional Remediation. If such agreement is not reached and signed by both BUYER and SELLER within twenty (20) business days of initiating negotiations, then BUYER shall deliver to SELLER its Final Remediation Cost Estimate, together with any and all supporting information deemed relevant by BUYER to the determination of a

reasonably estimated aggregate cost of the Additional Remediation in order to achieve the applicable Cleanup Target Level so that Governmental Confirmation can be obtained, and which is to be performed, as applicable, under Chapter 62-770, 62-730 or 62-780 of the Florida Administrative Code.

ii. At the written election of SELLER, which shall be provided to BUYER within fifteen (15) business days after receipt of the BUYER's Final Remediation Cost Estimate for matters listed in an Additional Remediation Notice, SELLER shall elect to have the Additional Remediation accomplished as follows pursuant to either **Section 21(c)(ii)(1) or (2)**:

(1) SELLER shall perform the Additional Remediation described in the BUYER's Final Remediation Cost Estimate in accordance with Environmental Law, shall use only the techniques identified in the Final Remediation Cost Estimate to perform the Additional Remediation, shall be the Person Responsible for Site Rehabilitation, shall secure all applicable Governmental Confirmations with respect to the Additional Remediation, and shall provide a copy of such Governmental Confirmations to BUYER promptly upon receipt. SELLER shall be entitled to be reimbursed for the performance of such Additional Remediation from the General Escrow Fund, from time to time, in accordance with the terms of the General Escrow Fund Agreement; or

(2) One hundred thirty percent (130%) of the Final Remediation Cost Estimate shall be paid to BUYER from the General Escrow Fund and BUYER shall perform the Additional Remediation and secure the Governmental Confirmations with respect to the applicable Additional Remediation. In such event, all financial and performance obligations contained in this Agreement with respect to such Additional Remediation, other than the payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate, shall be the sole obligation and liability of BUYER, and SELLER shall have no further obligation or liability with respect to such Additional Remediation. BUYER shall perform such Additional Remediation in accordance with Environmental Law as the Person Responsible for Site Rehabilitation, and will secure all applicable Governmental Confirmations with respect thereto.

iii. If SELLER elects to perform the Additional Remediation as provided in **Section 21.c.ii.(1)**, then SELLER shall perform the Additional Remediation as follows: (i) within ninety (90) days after SELLER's election, SELLER shall deliver to BUYER a proposed Additional Remediation Schedule and proposed work plans for performing the Additional Remediation and receiving all Governmental Confirmations for

the Additional Remediation within seven (7) years of BUYER's submittal of its Additional Remediation Notice, unless BUYER consents in writing to a longer period; (ii) within thirty (30) days of receiving written comments from BUYER requesting revisions to such proposed Additional Remediation Schedule and work plans, consider all such revisions as are reasonably requested by BUYER (including revisions to the Milestones to reasonably accommodate the construction schedule of BUYER for a South Florida Water Management District project on the Premises) and deliver the Additional Remediation Schedule (which shall contain Milestones) and work plans to BUYER; (iii) perform all such Additional Remediation at its own expense, subject to being reimbursed for the same from the General Escrow Fund in accordance with the General Escrow Agreement, and shall perform the Additional Remediation even if the actual cost exceeds the amount paid to the General Escrow Fund in accordance with **Section 10.b.** or the Final Remediation Cost Estimate; and (iv) promptly notify BUYER of the identification of the Release of Pollutants that was not identified in BUYER's Environmental Assessment. If the Lease Termination Date has occurred, SELLER shall have access to perform the Additional Remediation pursuant to a Remediation Access Agreement, attached as **Exhibit 21.c.iv**.

iv. On the annual anniversary of the Closing, if SELLER is performing Additional Remediation, it shall deliver to BUYER a report on the progress of the Additional Remediation, which shall include the following: (i) identification of whether the Additional Remediation performed to date has met the Additional Remediation Schedule, including the Milestones, and an explanation for any deviation from the Additional Remediation Schedule; (ii) costs incurred to date for Additional Remediation; and (iii) anticipated costs needed to complete the Additional Remediation, with a basis for the estimate. During the performance of the Additional Remediation, SELLER shall: (i) promptly provide BUYER with a copy of all documents, including but not limited to the Governmental Confirmation and correspondence and reports, exchanged between SELLER and any Governmental Body about the performance of the Additional Remediation; and (ii) respond to reasonable requests for information from BUYER about the Additional Remediation.

v. The General Escrow Fund established in accordance with **Section 10.b.** shall be administered by the Escrow Agent pursuant to the General Escrow Agreement. In the event that SELLER elects to proceed under **Section 21.c.ii.(1).** in order to accomplish Additional Remediation, SELLER shall use reasonable, good-faith, diligent efforts to perform the Additional Remediation in accordance with the terms of this Agreement. If BUYER reasonably determines that SELLER is not proceeding diligently to perform the Additional Remediation so that it can receive the Governmental Confirmations within seven (7) years after BUYER's submittal of its Environmental Notice (subject to extension as set forth in

Section 21.c.iii or to a longer period for which BUYER, in its sole and absolute discretion, has provided its written consent) then BUYER shall deliver written notice thereof to SELLER setting forth sufficient information to allow SELLER to respond thereto, whereupon SELLER shall have thirty (30) days thereafter to deliver to BUYER a written response. In the event of a disagreement between the Parties after such delivery as to whether SELLER was diligently pursuing the Additional Remediation then, either SELLER or BUYER may initiate dispute resolution procedures as provided for in **Section 20**.

vi. If BUYER provides no Additional Remediation Notice to SELLER under **Section 21.c.i.** (or if the obligations under any such Additional Remediation Notice have been satisfied) and BUYER INDEMNIFIED PARTIES provide no Environmental Notices to SELLER (or any such indemnification claims have been satisfied) on or before the third anniversary of the applicable Lease Termination Date, and if Governmental Confirmations for all of the Additional Remediation to be performed by SELLER pursuant to **Section 21.c.ii.1** have been issued by the end of such period for all of the Additional Remediation, subject to the terms of the Lease (if applicable) and the General Escrow Agreement, SELLER shall be entitled to receive any remaining amounts in the General Escrow Fund and the General Escrow Fund shall terminate. Notwithstanding the foregoing: (a) if substantially all (but not all) of the Additional Remediation has been completed, BUYER and SELLER shall use good-faith efforts to mutually agree to reduce the General Escrow Fund to an amount reasonably sufficient to cover the remaining costs of the Additional Remediation, but subject to the terms of the Lease (if applicable) and the General Escrow Agreement; and (b) other than as provided in clause (a) above, the General Escrow Fund shall not be terminated until the third (3rd) anniversary of the final Lease Termination Date.

d. BUYER agrees that prior to any sale or transfer by BUYER of all or a portion of the Premises containing levels of Pollutants above the applicable residential level set forth in Chapter 62-777 and Chapter 62-780, F.A.C. from and after the Closing, BUYER will record an Institutional Control against all or such portion of the Premises in favor of SELLER that will be binding upon and run with the land and will limit the use of all or such portion of the Premises to agricultural, commercial and industrial land uses, including, but not limited to, as classified by the NAICS and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004. Notwithstanding the foregoing, in the event that BUYER does not comply with the above, then BUYER shall be deemed to have breached its obligations under this subsection and SELLER shall have all rights and remedies provided under this Agreement as a result thereof.

e. Indemnification by SELLER. From and after the Closing Date, SELLER agrees to jointly and severally indemnify, defend, save, and hold harmless the Buyer Indemnified Parties from and against any and all Liabilities incurred or suffered by any Buyer Indemnified Party, as to which an Environmental Notice is made on or before the third anniversary of the Lease Termination Date, and arising out of (1) Direct Claims and Third Party Claims for an alleged violation of Environmental Law in connection with the Premises that existed on or before the Lease Termination Date and began on or after the date that SELLER acquired title to the Premises, except for any alleged violation of any Environmental Law arising out of Non-Point Source of Pollutants or Point Source of Pollutants Identified in the BUYER's Environmental Assessment, (2) a Non-Governmental, Unrelated Party Claim for Pollutant Liabilities, (3) a Third Party Claim for Offsite Environmental Liabilities, (4) a Third Party Claim for a Previously Unknown Pollutant Liability asserted against a Buyer Indemnified Party concerning all or part of the Premises after the Buyer Indemnified Party has transferred such Premises to a Person who is not an Affiliate of the Buyer Indemnified Party, or (5) Third Party Claims arising out of or related to SELLER's breach of, or failure to perform, its covenants and obligations in **Section 21.c.ii.(1)**; provided, however, that, in each of subsections (1) through (5) above, in no event shall SELLER be obligated to indemnify, defend, save and hold harmless any Buyer Indemnified Party for Liabilities for Environmental Claims to the extent (and only to the extent) the Liabilities are caused by any negligence by Buyer Indemnified Parties.

f. Indemnification by BUYER. From and after the Closing Date, BUYER agrees, to the extent permitted by Law, to indemnify, defend, save and hold harmless SELLER Indemnified Parties from and against any and all Liabilities incurred or suffered by any SELLER Indemnified Party arising out of or related to (1) Third Party Claims arising out of or related to BUYER's breach of, or failure to perform, its covenants and obligations in **Section 21.b.**, **Section 21.c.ii.(2)**, or both, or (2) Third Party Claims arising out of or related to BUYER's change in use of the Premises from agricultural, except to the extent that the Liability arises out of Pollutants, Point Source of Pollutants and Non-Point Source of Pollutants not identified in Buyer's Environmental Assessment. SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, the legal authority to agree to the provisions of this **Section 21.f.**

g. Procedure for Indemnification.

i. Direct Claims. If an Indemnified Party should have a Direct Claim against an Indemnifying Party, the Indemnified Party shall deliver a Direct Claim Notice to the Indemnifying Party by certified mail with reasonable promptness following discovery of the facts and circumstances giving rise to the Direct Claim. The failure to give timely notice pursuant to this **Section 21.g.i.** shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually

prejudiced by such failure. The Indemnifying Party shall have 30 calendar days to respond in writing to the Indemnified Party regarding such Direct Claim Notice. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the claim described in the Direct Claim Notice, or does not respond to the Direct Claim Notice within such 30-day period, the Liabilities arising from the claim specified in such Direct Claim Notice shall be conclusively deemed a Liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Liability to the Indemnified Party promptly following the final determination thereof. If the Indemnifying Party notifies the Indemnified Party that it disputes its liability for the matters described in the Direct Claim Notice, then the Indemnifying Party shall be deemed to dispute the claim, and the Parties shall proceed in good faith to resolve such dispute as provided in **Section 20**.

ii. Indemnification Procedure – Third Party Claims. The Parties agree that, if a Third Party Claim is made, the Indemnified Party will give a Third Party Claim Notice to the Indemnifying Party by certified mail within five (5) days of receipt of service of process if an Action has commenced or, in all other circumstances, within fifteen (15) days of receipt of written notice of such Third Party Claim. The failure to give timely notice pursuant to this **Section 21.g.ii**. shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have 30 days to respond in writing to the Indemnified Party regarding such Third Party Claim Notice. If the Indemnifying Party provides written notice to Indemnified Party during that 30-day period that it disputes its liability for the matters described in the Third Party Claim Notice, then the Indemnifying Party shall be deemed to dispute the Third Party Claim, and the Parties shall proceed in good faith to resolve such dispute as provided in **Section 20**. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the Third Party Claim described in the Third Party Claim Notice, or does not respond to such Third Party Claim Notice, the Liabilities arising from the Third Party Claim will be conclusively deemed a Liability of SELLER and the Parties shall proceed with the following indemnification procedures.

iii. Subject to any Laws, privileges (including the attorney client privilege and joint defense privilege), rights and the trade secret protocol developed by SELLER, if applicable, the Indemnified Party shall make available to the Indemnifying Party and its counsel, accountants and other representatives at reasonable times and for reasonable periods, during normal business hours, all books and records of the Indemnified Party reasonably relating to any such claim for indemnification, and each Party hereunder will render to the other such assistance as it may reasonably require of the other in order to insure prompt and adequate defense of any Third Party Claim.

iv. Subject to applicable Laws and the further provisions of this Section 21, the Indemnifying Party shall have the right to defend, compromise, and settle any third-party Action in the name of the Indemnified Party to the extent that Indemnifying Party may be liable to the Indemnified Party in connection therewith.

v. If the Indemnifying Party notifies the Indemnified Party that the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party under this Section 21.g.v for any fees of other counsel or any other expenses with respect to the defense of such Third Party Claim, in each case incurred by the Indemnified Party in connection with the defense of such Third Party Claim other than as contemplated under this Section 21.g.v.

vi. If the Indemnifying Party elects to assume the defense of such Third Party Claim, the Indemnifying Party shall have the right to defend such Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnifying Party. The Indemnifying Party shall have full control of such defense and proceedings, including settlement thereof; provided, however, that the Indemnifying Party shall not settle a Third Party Claim without the written consent of the Indemnified Party, which shall not be unreasonably withheld, unless (i) the relief consists solely of money damages and includes a provision where the plaintiff or claimant in the matter fully releases the Indemnified Party from all liability with respect thereto, and (ii) the settlement, compromise or discharge does not otherwise materially adversely affect the Indemnified Party. The Indemnified Party agrees to cooperate reasonably with the Indemnifying Party and its counsel in the compromise or settlement of, or defense against, any Third Party Claim and, if requested by the Indemnifying Party, the Indemnified Party will, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counter claim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates).

vii. Notwithstanding an election by the Indemnifying Party to assume the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel to represent it in, but not control, the defense, investigation, settlement, or litigation of such Third Party Claim, but the fees and expenses of such counsel shall be at the Indemnified Party's sole cost and expense unless (x) the Indemnifying Party shall have authorized in writing the Indemnified Party to employ separate counsel at the Indemnifying Party's expense, or (y) if, in the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, a conflict or potential interest exists

between the Indemnifying Party and the Indemnified Party, or (z) if, the named parties to such Third Party Claim include both the Indemnifying Party and the Indemnified Party and the Indemnified Party determines in good faith, based on the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, that the Indemnified Party may have defenses or counterclaims that are not available to the Indemnifying Party, or that are inconsistent with those available to the Indemnifying Party. In any event, the Indemnified Party and the Indemnifying Party and their counsel reasonably shall cooperate in the defense of any Third Party Claim subject to this **Section 21.g.vii** and keep such Persons informed of all developments relating to any such Third Party Claims, and provide copies to each other of all relevant correspondence and documentation relating thereto.

viii. If the Indemnifying Party, after receiving a Third Party Claim Notice, does not elect to defend such Third Party Claim within the time period specified herein or does not defend such Third Party Claim in good faith, the Indemnified Party shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to control the defense or settlement of such Third Party Claim; provided, however, that (i) the Indemnified Party shall not have any obligation to do so; (ii) the Indemnified Party's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this **Section 21.g.viii**; and (iii) the Indemnified Party shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed) and if the Indemnified Party does settle, compromise or discharge, or admit any liability with respect to any such Third Party Claim without the written consent of the Indemnifying Party, then the Indemnifying Party shall have no liability whatsoever, nor be bound in any way, in respect thereof.

h. Satisfaction of Indemnification Payments.

i. Subject to **Section 20.**, and except as otherwise mutually agreed, prior to paying any Third Party Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnified Party with a copy of a non-consensual, non-appealable, final judgment or decree, which has been entered after the matter has been fully and fairly litigated, that holds the Indemnified Party liable on such claim or, if the claim was not finally determined by a non-consensual, non-appealable judgment or decree, then the Indemnified Party must have received from the Indemnifying Party the written approval of the terms and conditions of the final settlement or compromise or other agreement that fully and finally determined the outcome, which written approval the Indemnifying Party

cannot unreasonably withhold. Except as otherwise mutually agreed, prior to paying any Direct Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnifying Party with reasonable documentation of the amount of such Direct Claim.

ii. BUYER Indemnified Parties' indemnification claims shall be satisfied solely from the General Escrow Fund, which fund shall be replenished according to the terms of the General Escrow Agreement.

iii. If a BUYER Indemnified Party makes an indemnification claim against the General Escrow Fund, or if any BUYER Indemnified Party shall have the right to assume the defense of a Third Party Claim pursuant to **Section 21.g.iii.** or is entitled to receive the reasonable legal fees and expenses associated with a claim, all such amounts shall be exclusively advanced by or set-off against the General Fund until the General Escrow Fund is completely depleted in accordance with the General Escrow Agreement, and BUYER Indemnified Party and SELLER shall execute a joint written notice to the Escrow Agent, and otherwise cooperate with each other in obtaining any such funds.

i. Limitations on Indemnification. Notwithstanding the foregoing, to the extent permitted by Law, an Indemnified Party shall not be entitled to indemnification under **Sections 21.e. or 21.f.** for, and in no event shall the Indemnifying Party have any Liability to any Indemnified Parties for, and the Liabilities shall not include, loss of profits or other consequential damages or punitive damages all of which are hereby waived by BUYER (other than loss of profits or other consequential damages, incidental damages or punitive damages suffered by third persons for which legal responsibility is allocated to any Indemnified Party).

j. Insurance Recoveries. If any Liabilities related to a claim by an Indemnified Party are covered by one or more third party insurance policies held by such Indemnified Party and such Indemnified Party actually receives a full or partial recovery under such insurance policies, such Indemnified Party shall use such recovery to refund, within ten (10) Business Days, the aggregate amount of any payments (or, if such recovery is less than the aggregate amount of such payments, a portion thereof) actually received by such Indemnified Party from Indemnifying Party with respect to such Liabilities; provided, however, that such refund shall be net of (i) the amount of any costs incurred in collecting such insurance recovery, including the amount of any co-payment or deductible, and (ii) the amount of any premium increase in the next policy period of the applicable insurance policy or in a replacement insurance policy that results directly from the assertion of such claim, as determined by correspondence from the insurance carrier or insurance broker to the Indemnified Party, a copy of which shall have been provided to the Indemnifying Party. For the avoidance of doubt, the Parties agree that the existence of an insurance claim shall not require an Indemnified Party to pursue an insurance claim prior to making an

indemnification claim under this Section 20, but if an indemnification claim is made, the Indemnified Party must use commercially reasonable effort to prosecute available insurance claims.

k. Tax Consequences of Indemnification. The Parties agree to treat any indemnification payment made pursuant to this Section 20 as an adjustment to the Purchase Price for all income or similar tax purposes to the extent permitted by Law.

l. Survival. The terms of this Section 21. shall survive the Closing or termination of this Agreement.

22. NO PERSONAL LIABILITY.

Notwithstanding anything to the contrary in this Agreement, to the extent permitted by Law, no present or future Affiliate of SELLER or BUYER, nor any present or future member, principal, shareholder, manager, officer, official, director, employee or agent of SELLER or BUYER (other than any such Person that is Party hereto), will be personally liable, directly or indirectly, under or in connection with this Agreement, or any document, instrument or certificate securing or otherwise executed in connection with this Agreement, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter, or in respect of any matter, condition, injury or loss related to this Agreement or the Premises, and each of the Parties, on behalf if itself and each of its successors and permitted assignees, waives and does hereby waive any such personal liability.

23. TAX DEFERRED EXCHANGE.

BUYER and SELLER hereby acknowledge that SELLER may elect that all or a portion of the transaction contemplated by this Agreement may qualify as a tax-free exchange within the meaning of Section 1031 of the Code. BUYER agrees to take any further action commercially reasonable and appropriate to assist and cooperate with SELLER in effectuating such tax-free exchange; provided, however, SELLER hereby agrees that (a) SELLER shall pay directly for any additional expense caused to BUYER as a result of actions taken by BUYER for the purpose of facilitating such exchange, (b) BUYER's agreement to facilitate such exchange will not require it to take title to any property other than the Premises, and (c) SELLER shall reimburse, indemnify, defend and hold harmless BUYER from any liabilities resulting from BUYER's participation in such exchange for the benefit of SELLER.

24. NOTICES

Any notice, request, demand, instruction, or other communications to be given, provided or delivered to any Party hereunder, shall be in writing and shall be deemed to be delivered upon the earlier to occur of: (a) actual receipt if delivered by (i) hand, commercial courier or reputable overnight delivery service to the address indicated, (ii) facsimile

transmission, with confirmation of receipt or (iii) electronic transmission, if also sent by another alternative means of delivery named herein; or (b) the delivery by registered or certified United Stated Postal Service mail, return receipt requested, postage prepaid, addressed as follows:

If to BUYER:	South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 Attention: Executive Director and Chairman Fax: (561) 681-6233
With a copy to:	South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 Attention: General Counsel Fax: (561) 682-6447
	And
	Florida Department of Environmental Protection 3900 Commonwealth Blvd M.S. 49 Tallahassee, Florida 32399 Attention: Secretary, Department of Environmental Protection Fax: (850) 245-2128
If to SELLER:	c/o United States Sugar Corporation 111 Ponce de Leon Avenue Clewiston, Florida 33440 Attention: Malcolm S. (Bubba) Wade, Jr. and Edward Almeida, Esq. Fax: (863) 902-2120
With a copy to:	Gunster, Yoakley & Stewart, P.A. Attorneys At Law Las Olas Centre 450 East Las Olas Boulevard Suite 1400 Fort Lauderdale, Florida 33301-4206 Attention: Daniel M. Mackler, Esq. and Danielle DeVito Hurley, Esq. Fax: (954) 523-1722

The addresses for the purpose of this Paragraph may be changed by either Party by giving written notice of such change to the other Party in the manner provided herein. Attorneys

for the respective Parties to this Agreement may send and receive notices on their client's behalf.

25. EXCLUSIVITY; ACQUISITION PROPOSALS.

a. Certain Definitions. For purposes of this Agreement:

i. "Acquisition Proposal" means any written inquiry, proposal or offer from a Person or group of Persons other than SELLER and SELLER Representatives for, whether in one transaction or a series of transactions: (i) any direct or indirect sale or other disposition (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of the Premises, whether alone or together with other assets, or of any combination of assets that represents all or substantially all of the assets of any SELLER and its respective subsidiaries, taken as a whole; (ii) any issuance, sale or other disposition by PARENT (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of securities representing more than 80% of the voting rights of PARENT'S outstanding common stock; (iii) any tender offer or exchange offer that if consummated would result in any Person or group of Persons acquiring beneficial ownership, or the right to acquire beneficial ownership of, more than 80% of the voting rights of PARENT'S outstanding common stock; (iv) any merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution, equity infusion or similar transaction involving SELLER and/or its respective subsidiaries; or (v) any transaction that is similar in form, substance or purpose to any of the foregoing transactions; provided, however, that the term "Acquisition Proposal" shall not include a Permitted Reorganization, the transactions contemplated by this Agreement, or any Additional Transaction.

ii. "Exclusivity Period" means the period beginning upon Validation and ending on the Closing Date or earlier termination of this Agreement in accordance with its terms.

iii. "Qualified Purchaser" means any Person or group of Persons that SELLER reasonably believes are capable of consummating a Superior Proposal.

iv. "Solicitation Period" means the period beginning on the Effective Date and ending at 5:00 P.M., Eastern Time, on the sixtieth (60^{th}) day thereafter.

v. "Alternative Acquisition Agreement" means a definitive purchase agreement, or series of related agreements, entered into, between any combination of PARENT and the SELLING SUBSIDIARIES and a Qualified Purchaser with respect to a Superior Proposal (together with any related schedules, exhibits or other documentation).

vi. "Matching Period" means the period beginning on the day BUYER has delivered a copy of an Alternative Acquisition Agreement in accordance with **Section 25.d.** below and ending forty (40) calendar days thereafter.

vii. "Termination Fee" means an amount in cash equal to Sixteen Million Dollars (U.S. $16,000,000.00) which, if due and payable under **Section 25.e.**, shall be paid by wire transfer of immediately available funds denominated in U.S. Dollars to the account or accounts designated by BUYER. SELLER acknowledges that the agreement to pay the Termination Fee in the circumstances set forth in **Section 25.e.** is an integral part of the transactions contemplated by this Agreement and that, without this Agreement, BUYER would not enter into this Agreement; accordingly, if the Termination Fee is not paid when due, Buyer shall be entitled to interest on the Termination Fee at a rate per annum equal to the Prime Rate as published in the Wall Street Journal, Eastern Edition, in effect from time to time during the period from the date that the such payment was required to be made pursuant to this Agreement to the date of payment.

viii. "Superior Proposal" means any bona fide Acquisition Proposal made in writing that would be consummated on or before June 30, 2010 and that the Board of Directors of Parent in its good faith judgment determines would, if consummated, result in a transaction that is more favorable to Parent and its stockholders (as they exist immediately prior to consummating such transaction) than the transactions contemplated by this Agreement, which determination is made (A) after receiving the advice of a financial advisor, (B) after taking into account the likelihood (and likely timing) of consummation of such transaction on the terms set forth therein, and (C) after taking into account all appropriate legal, tax, financial (including the financing terms of such proposal), regulatory or other aspects of such proposal and any other relevant factors permitted by Law.

ix. "Additional Transaction" Any transaction or series of transactions between any Person or group of Persons and PARENT, its subsidiaries or any combination thereof, that does not preclude the sale of the Premises to BUYER and the granting to BUYER of the Option and Right of First Refusal to purchase the Option Property.

x. "Window-shop Period" means the period beginning upon expiration of the Solicitation Period and ending upon Validation.

b. Solicitation Period. Notwithstanding anything contained herein to the contrary, during the Solicitation Period, SELLER and the SELLER Representatives shall have the right to, directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals from any Person or Persons, including by way of providing access to non-public information pursuant to one or more confidentiality agreements; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise

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cooperate with or assist or participate in or facilitate any such discussions or negotiations, including by delivering confidential information regarding any or all of SELLER, its business operations and its assets, including the Premises, to Persons submitting an Acquisition Proposal and their representatives; provided, however, that SELLER shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons solicited hereunder, the terms of which are not materially more favorable to such Person than those in the Confidentiality Letter that SELLER has entered into with BUYER, (ii) if, at any time SELLER identifies a Person or Persons from whom it has received an Acquisition Proposal to be a Qualified Purchaser, (A) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of making such determination) of the identity of such Qualified Purchaser; and (B) keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.

c. Window-shop Period. Notwithstanding anything contained herein to the contrary, during the Window-Shop Period, SELLER and the SELLER Representatives may continue discussions or negotiations with respect to Acquisition Proposals received from Persons solicited during the Solicitation Period, but SELLER will not and will cause SELLER Representatives and other Persons acting on its behalf not to, directly or indirectly initiate, seek or solicit any additional Acquisition Proposals. If, however, a Person or group of Persons approach SELLER or the SELLER Representatives, unsolicited, with an interest in submitting an Acquisition Proposal, and if PARENT'S Board of Directors determines in good faith, after consultation with its financial and legal advisors, that (1) such unsolicited Acquisition Proposal is bona fide and could reasonably be expected to result in a Superior Proposal, (2) such Person or group of Persons could reasonably be expected to be able to finance such Acquisition Proposal, and (3) the failure to consider the Acquisition Proposal would be inconsistent with the fulfillment of its fiduciary duties to the stockholders under applicable Law, then SELLER may (A) furnish information with respect to any or all of SELLER, its business operations and its assets, including the Premises, to the Person making such Acquisition Proposal and its representatives and (B) enter into and maintain discussions or negotiations with the Person making such Acquisition Proposal; provided, however, that Seller shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons making an unsolicited Acquisition Proposal, the terms of which are not materially more favorable to such Person or Persons than those in the Confidentiality Letter that SELLER entered into with BUYER, (ii) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of entering into such a confidentiality agreement) of the identity of the Person or Persons making the unsolicited Acquisition Proposal, and (iii) keep BUYER reasonably informed of the status of any discussions with any such Person or Persons. If, at any time SELLER identifies a Person or Persons from whom it has received an unsolicited Acquisition Proposal to be a Qualified Purchaser, SELLER agrees (A) to notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of making such determination) of the identity of such Qualified Purchaser and the determination of Qualified Purchaser status; and (B) to keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.

d. Superior Proposal. If, prior to the Exclusivity Period, SELLER receives an Acquisition Proposal from any Qualified Purchaser(s) that the Board of Directors of PARENT concludes in good faith constitutes a Superior Proposal, any or all of PARENT and each other SELLER may enter into an Alternative Acquisition Agreement(s), except that the closing of any Superior Proposal evidenced by an Alternative Acquisition Agreement must be conditioned upon BUYER's failure to exercise its rights set forth in subparagraph (e) below and if such right is not exercised, BUYER's receipt of the payment of the Termination Fee pursuant to subparagraph (e) below and termination of this Agreement (without any cost, liability or obligation whatsoever to BUYER) as contemplated by subparagraph (e) below. SELLER (i) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within one (1) Business Day), make a true and complete copy thereof available for review by BUYER and BUYER's representatives, (ii) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within five (5) business days) make available to BUYER and its representatives any information concerning SELLER, its business operations and its assets, including the Premises, that has been provided by the Qualified Purchaser in connection with the Superior Proposal that has not previously been provided to BUYER, and (iii) shall not enter into any confidentiality provisions restricting the provision of such materials to BUYER. Any materials, including a term sheet, a letter of intent or definitive agreement, given to BUYER in connection with the Superior Proposal, (A) shall be designated "Trade Secret" by SELLER, (B) shall be subject to the trade secret protocol established by SELLER attached hereto as **Schedule 6.a.**, and (C) shall be kept confidential by BUYER in accordance with the Confidentiality Letter.

e. Matching Period; Termination; and Termination Fee. During the Matching Period SELLER shall, and shall cause SELLER Representatives to, negotiate with BUYER in good faith (to the extent BUYER desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the Acquisition Proposal provided for in the Alternative Acquisition Agreement ceases to constitute a Superior Proposal. If BUYER agrees to make adjustments in the terms and conditions of this Agreement such that PARENT's Board of Directors concludes that the Acquisition Proposal provided for in the Alternative Acquisition Agreement no longer constitutes a Superior Proposal, the Alternative Acquisition Agreement shall terminate (without any liability or obligation whatsoever to BUYER). If BUYER does not so agree during the Matching Period, SELLER may proceed with the transaction contemplated by the Alternative Acquisition Agreement, terminate this Agreement, and BUYER shall be entitled to payment of the Termination Fee, payable by wire transfer of immediately available funds. Any termination pursuant to this subsection (e) shall not constitute or serve as the basis for a breach of or default under this Agreement. The Termination Fee is the sole remedy available to BUYER in connection with a termination of this Agreement in accordance with the terms of this **Section 25** and BUYER specifically waives its right to seek specific performance hereunder.

f. Exclusivity. From the date of Validation until the Closing or earlier termination of this Agreement in accordance with its terms, SELLER agrees that, except with respect to this Agreement and the transactions contemplated hereby, SELLER will not and will

cause the SELLER Representatives and other Persons acting on its behalf not to, directly or indirectly: (i) initiate, solicit or seek, entertain any inquiries or the making or implementation of any proposal or offer with respect to an Acquisition Proposal; (ii) engage in any discussions or negotiations concerning, or provide any confidential information or data to, or have any substantive discussion with, any Person relating to an Acquisition Proposal; (iii) otherwise cooperate with any Person in any effort or attempt to make, implement or accept any Acquisition Proposal; or (iv) enter into an agreement, contract, letter of intent, memorandum of understanding or confidentiality agreement with any Person relating to an Acquisition Proposal. SELLER agrees to notify Buyer promptly if it or any SELLER Representative or other Persons acting on its behalf receives, after the date of Validation, any written inquiries, offers or proposals relating to an Acquisition Proposal, and provide Buyer with the details thereof, keep BUYER informed with respect thereto, and provide BUYER with copies thereof.

g. Post-Termination Transaction. In the event SELLER terminates this Agreement because SELLER fails to obtain approval of PARENT'S stockholders for any reason, and if SELLER thereafter sells all or substantially all of the Premises or all or substantially all of the Option Property within a period of twelve (12) months following said termination, then BUYER shall be entitled to receive the Termination Fee. This subsection (g) shall survive the Closing.

h. Additional Transactions. Nothing in this **Section 25** shall limit SELLER'S right to engage in activities related to pursuing, negotiating, documenting and completing Additional Transactions. In no event shall the Termination Fee be payable to BUYER in respect of an Additional Transaction.

26. OPTION TO PURCHASE REAL PROPERTY

a. If the Closing occurs, then for (i) a period commencing from the Closing Date through the date that is immediately prior to third (3rd) anniversary thereof (the "Exclusive Option Period"), SELLER hereby grants to BUYER the exclusive option (the "Exclusive Option") and (ii) a period commencing on the third (3^{rd}) anniversary of the Closing Date through the tenth (10^{th}) anniversary thereof (the "Non-Exclusive Option Period"), SELLER hereby grants to BUYER, the non-exclusive option (the "Non-Exclusive Option") (the Non-Exclusive Option and the Exclusive Option, are hereinafter collectively referred to as the "Option", and the Exclusive Option Period and the Non-Exclusive Option Period are hereinafter collectively to as the "Option Period"), to purchase all (but not less than all) of that certain real property located in Hendry, Glades, and Palm Beach Counties, Florida as more particularly described on **Exhibit 26.a** attached hereto (the "Option Property"), which consists of approximately one hundred seven thousand one hundred eighty-seven (107,187) acres, more or less, subject to any and all leases for all or any portion of the Option Property then in effect at the time of exercise of such Option and subject to the New Lease (as defined in **subsection j** below). BUYER may exercise the Option at any time during the applicable Option

Period by giving SELLER written notice thereof ("Option Notice"). During the Exclusive Option Period, in no event shall SELLER sell, enter into new leases for (provided this shall not prohibit SELLER from reinstating any lease in order to resolve any tenant dispute), transfer or convey any portion of the Option Property without BUYER's written consent, which may be withheld in BUYER's sole and absolute discretion, provided, however, that: (i) SELLER may sell, transfer or convey all or substantially all of the Option Property during the Exclusive Option Period without BUYER's written consent, provided and on the condition that such property is sold subject to this Option (a "Permitted Sale"); (ii) SELLER may enter into agricultural leases during the Exclusive Option Period so long as the term of any such leases does not exceed three (3) years, or, if the lease term exceeds three (3) years, such lease must contain a waiver by the tenant of the relocation rights under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 U.S.C. Sec. 4601, et seq.), and must be terminable upon two (2) years written notice, without payment or relocation benefits, provided such notice shall not be effective prior to the end of the 3rd anniversary of the commencement of such lease term; and (iii) SELLER may at all times finance and refinance the Option Property without BUYER's consent. During the Non-Exclusive Option Period, there shall be no restrictions on SELLER's ability to: (A) sell, transfer or convey all or any portion of the Option Property (subject to the Right of First Refusal); or (B) lease all or any portion of the Option Property (provided that SELLER will notify BUYER of its intention to enter into any such lease(s), but BUYER shall have no right to consent to or approve the same). For purposes of determining the land subject to the Option at any time, "Option Property" shall mean the property designated as such in Exhibit 26.a as of the Effective Date, excluding any lands which at the time of exercise of the Option by BUYER have been (i) sold, transferred or conveyed by SELLER in accordance with this Agreement (other than in connection with a Permitted Sale), (ii) acquired by BUYER in the exercise of the Right of First Refusal, (iii) excluded by BUYER under the Option Purchase Agreement (as defined below) in accordance with the title provisions thereof; or (iv) excluded as a result of failure, breach or default by SELLER or any other cause except BUYER's default.

b. The purchase price for the Option Property during the Exclusive Option Period shall be fixed at SEVEN THOUSAND FOUR HUNDRED DOLLARS AND NO/100 ($7,400) per acre and for the Non-Exclusive Option Period shall be determined as set forth below (the "Option Property Purchase Price") and the fair market rent for the Premises and Option Property to be paid under the New Lease (as defined below) (regardless of whether the Option is exercised during the Exclusive Option Period or Non-Exclusive Option Period) shall be determined as set forth below (collectively, the "Post Option Fair Market Rent").

c. If the Option is exercised during the Exclusive Option Period, then the Option Notice shall include an original, signed appraisal(s) dated within thirty (30) days of such notice setting forth BUYER's proposed Post Option Fair Market Rent for the Premises and Option Property ("Buyer's Proposed Post Option Fair Market

Rent"). The appraisal must comply with the statutorily mandated appraisal standards (applicable to BUYER) and must have been performed by an appraiser meeting the Appraiser Requirements set forth in **subsection f.iv** below (collectively, "Buyer's Appraisal").

d. If the Option is exercised during the Non-Exclusive Option Period, then the Option Notice shall include an original, signed Buyer's Appraisal(s) dated within thirty (30) days of such notice setting forth (i) BUYER's proposed Option Property Purchase Price ("Buyer's Proposed Option Property Purchase Price"), and (ii) Buyer's proposed Post Option Fair Market Rent for the Premises and Option Property.

e. Within sixty (60) days after receipt of Buyer's Appraisal that is included in the Option Notice, SELLER shall elect to either: (i) as applicable, accept Buyer's Proposed Option Property Purchase Price as the Option Property Purchase Price and/or Buyer's Proposed Post Option Fair Market Rent as the Post Option Fair Market Rent; and/or (ii) as applicable, deliver to BUYER an original, signed appraisal(s) setting forth SELLER's proposed Option Property Purchase Price ("Seller's Proposed Option Property Purchase Price") and/or SELLER's proposed Post Option Fair Market Rent ("Seller's Proposed Post Option Fair Market Rent"), which appraisal(s) must be performed by an appraiser(s) meeting the Appraiser Requirements set forth below in **subsection f.iv below** and must be dated within sixty (60) days of SELLER's receipt of BUYER's Option Notice (including Buyer's Appraisal) (collectively, "Seller's Appraisal").

f. If SELLER elects to obtain Seller's Appraisal under **subsection e(ii)** above, then, as applicable:

i. With respect to the determination of the Option Property Purchase Price:

(1) In the event Seller's Proposed Option Property Purchase Price is more than or equal to ninety percent (90%) of and less than or equal to one hundred ten percent (110%) of Buyer's Proposed Option Property Purchase Price, then the Option Property Purchase Price shall be deemed to be the average of Buyer's Proposed Option Property Purchase Price and Seller's Proposed Option Property Purchase Price (i.e., the sum of both proposed purchase prices divided by two (2)).

(2) In the event Seller's Proposed Option Property Purchase Price is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of Buyer's Proposed Option Property Purchase Price, then within fifteen (15) days after SELLER's delivery of Seller's Appraisal to BUYER setting forth Seller's Proposed Option Property Purchase Price, Seller's appraiser and Buyer's appraiser must select a third (3rd) appraiser meeting the Appraiser Requirements set forth below (the "Third Appraiser") (it being

agreed that the Third Appraiser may be different for the purchase price and rental appraisals).

ii. With respect to the determination of the Post Option Fair Market Rent:

(1) In the event Seller's Proposed Post Option Fair Market Rent is more than or equal to ninety percent (90%) of and less than or equal to one hundred ten percent (110%) of Buyer's Proposed Post Option Fair Market Rent, then the Post Option Fair Market Rent shall be deemed to be the average of Buyer's Proposed Post Option Fair Market Rent and Seller's Proposed Post Option Fair Market Rent (i.e., the sum of both proposed rents divided by two (2)).

(2) In the event Seller's Proposed Post Option Fair Market Rent is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of Buyer's Proposed Post Option Fair Market Rent, then within fifteen (15) days after SELLER's delivery of Seller's Appraisal to BUYER setting forth Seller's Proposed Post Option Fair Market Rent, Seller's appraiser and Buyer's appraiser must select the Third Appraiser (if not already appointed pursuant to subsection (i)(2) above).

iii. The Third Appraiser shall perform its appraisal of its proposed Option Property Purchase Price and/or its proposed Post Option Fair Market Rent, as applicable, within sixty (60) days of being selected by Seller's appraiser and Buyer's appraiser. Once such appraisal is complete, the average of the two (2) closest appraisals in terms of total appraised value of the Option Property Purchase Price and/or the Post Option Fair Market Rent, as applicable, shall be deemed to be the Option Property Purchase Price and/or the Post Option Fair Market Rent, respectively.

iv. Unless otherwise agreed to in writing by SELLER and BUYER, each of the appraisers set forth above shall be M.A.I. certified appraisers, having at least ten (10) years experience in appraising the fair market value and fair market rental (as applicable) of agricultural property in Palm Beach County, Florida (the "Appraiser Requirements").

v. BUYER and SELLER shall each be responsible for the fees, costs and expenses of their respective appraiser(s). The fees, costs and expenses of the Third Appraiser and any mediation to select the same as provided in subsection (j) below shall be shared equally by BUYER and SELLER.

vi. After the initial determination of the Post Option Fair Market Rent, such rent shall be adjusted to fair market value on every third anniversary of the closing under the Option Purchase Agreement and in the intervening years

such rent shall be adjusted in accordance with procedure set forth in the Lease.

g. Notwithstanding anything contained herein to the contrary:

i. if the Option is exercised during the Non-Exclusive Option Period and the Option Property Purchase Price as determined above is less than an average of SEVEN THOUSAND FOUR HUNDRED DOLLARS AND NO/100 ($7,400.00) per acre, SELLER shall have the right, in SELLER's sole and absolute discretion, to not sell the Option Property to BUYER without any obligation or liability whatsoever to SELLER by providing written notice to BUYER of such election within sixty (60) days after the Option Property Purchase Price has been determined, whereupon the Option shall continue to be in effect until the expiration of the Option Period; it being agreed that failure of SELLER to deliver such notice within the 60-day period shall be deemed to be an acceptance of the Option Property Purchase Price; and

ii. if the Option is exercised during the Non-Exclusive Option Period and the Option Property Purchase Price as determined above is greater than the Buyer's Proposed Option Property Purchase Price, BUYER shall have the right, in BUYER's sole and absolute discretion, to not purchase the Option Property from SELLER without any obligation or liability whatsoever to BUYER by providing written notice to SELLER of such election within sixty (60) days after the Option Property Purchase Price has been determined, whereupon the Option shall automatically and immediately become null and void and neither party hereto shall have any other liability, obligation, or duty pursuant to the Option, it being agreed that failure of BUYER to deliver such notice within the 60-day period shall be deemed to be an acceptance of the Option Property Purchase Price.

h. If SELLER's appraiser and BUYER's appraiser fail to appoint the Third Appraiser within the time and in the manner prescribed in **subsection (f)(i)(2)** or **f(ii)(2)** above, then SELLER and/or BUYER shall promptly apply to the Palm Beach County office of Mediation, Inc. (or if such company is no longer in business, another mediation company with offices in Palm Beach County) for the appointment of the Third Appraiser. Within five (5) days of receipt of notice from one Party that such mediation application has been filed, each Party shall submit the names of up to three (3) appraisers meeting the Appraisal Requirements for the mediator to select. The mediator shall be instructed by either Party to select the Third Appraiser within ten (10) days after receipt of such names. The failure of a Party to timely submit any names constitutes a waiver of the right to so submit such names and the mediator shall select the Third Appraiser from the list of names that was timely submitted.

i. In the event the BUYER does not exercise the Option during the Option Period as provided in this **Section 26**, the Option shall automatically and immediately without notice become null and void and neither Party hereto shall have any other liability, obligation, or duty pursuant to the Option. In the event that BUYER does exercise the Option during the Option Period as provided in this **Section 26** and the transaction fails to close for any reason whatsoever, other than SELLER's default, then the Option shall automatically and immediately without notice become null and void and neither Party hereto shall have any other liability, obligation, or duty pursuant to the Option. In the event that the Option is exercised and the transaction fails to close as a result of SELLER's default under this Agreement or the Option Purchase Agreement, as applicable after the expiration of any applicable cure period, and provided BUYER is not in default under this Agreement or the Option Purchase Agreement, as applicable, after the expiration of any applicable cure period, then, without limitation as to any of BUYER's or SELLER's remedies under this Agreement or the Option Purchase Agreement, as applicable, the Option shall survive, and the Right of First Refusal shall also be deemed to have been reinstated as if the Option were not exercised, all in accordance with the terms of this Agreement.

j. In the event the BUYER exercises the Option as provided for herein, then, within sixty (60) days after exercise of the Option during the Exclusive Option Period or within sixty (60) days after the Option Purchase Price has been determined in accordance with **subsection c**, if the Option is exercised during the Non-Exclusive Option Period, or such other period of time mutually agreed upon in writing by the Parties, both Parties agree to execute an "Agreement for Sale and Purchase" in substantially the same form and content as this Agreement with appropriate modifications to pertinent terms including, but not limited to (i) the inclusion of a ninety (90) day inspection period consistent with **Section 19.b** of the Original Agreement as it existed on December 29, 2008, (ii) a closing date to occur one hundred twenty (120) days following expiration of the inspection period, (iii) pro-rata adjustments to the amount for Curable Title Defects, the amount for the General Escrow Fund, and the payment amount in exchange for BUYER's Remediation of Pollutants per **Section 21.b.** of this Agreement (which adjustments shall be made using the same per acre calculations utilized by the Parties in order to modify the amounts set forth in the Original Agreement), (iv) appropriate modifications to the representations and warranties to conform the same to then existing facts, as applicable, all of which shall be in form and content reasonably acceptable to SELLER and BUYER (such agreement shall be referred to as the "Option Purchase Agreement") and (v) an exhibit which contains an amendment to the Lease which adds the Option Property to the "Premises" between BUYER, as lessor, and SELLER, as lessee, or, at SELLER's election, (x) a separate lease for the Option Property and an amendment to the Lease which reflects the change in rent and other modifications as contemplated in this Agreement or (y) a consolidated Lease for the Option Property and the Premises, which shall be in substantially the same form and content as the Lease (such amendments and/or new lease referred in clauses (x) and (y) is collectively

referred to as the "New Lease"), it being agreed that the New Lease shall contain the modifications to the Lease set forth on **Exhibit 26.j** and shall be executed and delivered by the Parties at the closing of the Option Property. It is further agreed by the Parties that SELLER's option to elect the form of the New Lease under clauses (x) or (y) above is nevertheless subject to BUYER's right to elect the form under clause (x), if such election is necessary for SELLER's financing to acquire the Option Property.

k. In the event, after BUYER's exercise of the Option, the Parties fail to enter into an Option Purchase Agreement within 180 days after the Option Property Purchase Price has been determined as provided above and neither Party has commenced an action against the other to enforce the terms of this Section 26 during said 180 day period, the Option shall automatically and immediately without notice become null and void.

l. BUYER hereby represents that as of the Effective Date, it has no present intention to initiate or commence eminent domain of any or all of the Premises or Option Property. BUYER hereby agrees that in the event that: (a) during the Option Period, BUYER initiates or commences any taking for public or quasi-public use pursuant to the power of eminent domain of any or all of the Option Property or any interest therein (the "Taking Proceeding"); and (b) BUYER does not cease the Taking Proceeding within forty-five (45) days after written notice from SELLER, then the Option shall be deemed to have been automatically exercised by BUYER with respect to any portion of the Option Property not being so taken by eminent domain unless SELLER gives written notice within five (5) business days after the expiration of such 45-day notice period that SELLER has elected to terminate the Option, it being agreed by the Parties that SELLER's election to terminate the Option shall be in addition to all other rights and remedies available to SELLER at law, in equity or under this Agreement as a result of BUYER's breach of this subparagraph. If at any time prior to the expiration of the Option Period, any proceedings shall be commenced for the taking of all of the Option Property or any material portion thereof or any interest therein, for public or quasi-public use pursuant to the power of eminent domain by any public or quasi-public agency (other than BUYER), SELLER shall furnish BUYER with written notice of any proposed condemnation within five (5) business days after SELLER's receipt of such notification, and, in such event, the Option shall automatically terminate as to any such portion of or interest in the Option Property being taken by eminent domain and thereafter neither BUYER or SELLER shall have any further rights or obligations hereunder with respect to such portion of or interest in the Option Property except as otherwise expressly provided herein. In the event of a taking described in the immediately preceding sentence, BUYER shall not, during the Option Period, use or take title to all or a portion of or interest in the Option Property that is so taken, unless BUYER exercises the Option for any remaining acreage of the Option Property not so taken within forty-five (45) days after receipt of written notice from SELLER advising BUYER that it may not use or take title to all or a portion of or interest

in the Option Property that is so taken. Notwithstanding the foregoing, nothing contained herein shall require BUYER to exercise (or have been deemed to have automatically exercised) the Option with respect to a taking by eminent domain of less than 1,000 acres (in the aggregate) of the Option Property or any interest therein. SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, legal authority to agree to the provisions of this **Section 26(l)**.

m. Between the fourth (4^{th}) and fifth (5^{th}) anniversary of the Closing Date, BUYER and SELLER shall meet to discuss, without prejudice to BUYER's rights hereunder, BUYER's intent concerning the exercise of the Option.

n. In no event shall the provisions of this **Section 26** (i.e., the Option) be assigned by BUYER, other than to The Board of Trustees of the Internal Improvement Trust Fund ("TIITF") which assignment, in order to be effective, must be delivered to SELLER and include an assumption by TIITF, all in form and substance reasonably acceptable to SELLER.

o. The provisions in this **Section 26** shall survive the Closing.

27. RIGHT OF FIRST REFUSAL.

a. Subject to **Section 27.e** below, if at any time during the Non-Exclusive Option Period, SELLER desires to sell any or all of its fee simple interest in the Option Property (which sale may also include other assets of SELLER) to any Person who, as of the Effective Date, is unaffiliated with SELLER (for purposes of this Section, the "Proposed Purchaser"), and has received a bona fide written offer from, or otherwise has negotiated acceptable terms with, such Proposed Purchaser (for purposes of this Section, the "Bona Fide Offer") to purchase such real property and, to the extent included in the Bona Fide Offer, other assets of SELLER (for purposes of this Section such real property and other assets of SELLER that are included in the Bona Fide Offer are collectively referred to herein as the "Offered Option Property") from SELLER, SELLER shall submit a written offer (the "Offer") to sell all, but not less than all, of such Offered Option Property to BUYER on terms and conditions, including price, not less favorable to the BUYER than those on which the SELLER proposes to sell such Offered Option Property to the Proposed Purchaser. The Offer shall disclose the identity of the Proposed Purchaser (if any), the Offered Option Property proposed to be sold and the terms and conditions, including price, of the proposed sale, and shall be accompanied by a copy of the Bona Fide Offer, together with any information concerning the Offered Option Property that has been provided by SELLER to the Proposed Transferee, or by the Proposed Transferee to SELLER, in connection with the Bona Fide Offer that has not previously been provided to BUYER, all of which may be designated "Trade Secret" by SELLER and shall be kept confidential by BUYER in accordance with the Confidentiality Letter. The Offer shall further state that BUYER may acquire the Offered Option Property

for the price and upon the terms and other conditions of the proposed sale to the Proposed Purchaser as set forth in the Bona Fide Offer. As used in this Section, the term "Person" shall be construed broadly and shall include, but not be limited to, an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof. BUYER's rights under this **Section 27** are herein referred to as the "Right of First Refusal"). Notwithstanding anything in this Agreement to the contrary, in no event shall the Right of First Refusal be applicable to the sale of any of SELLER's other assets (i.e., other than the Option Property), unless such other assets are included together with all or any portion of the Option Property under the Bona Fide Offer.

b. If BUYER desires to exercise its Right of First Refusal and purchase the Offered Option Property, BUYER shall deliver a written notice of its exercise of its Right of First Refusal to purchase such Offered Option Property pursuant to the terms of the Offer to SELLER within forty (40) calendar days of the date of receipt by BUYER of the Offer. If BUYER does not timely deliver such written notice of exercise of its Right of First Refusal, then BUYER shall be deemed to have waived its Right of First Refusal with respect to such Offer and, without limiting the effectiveness of the foregoing wavier, BUYER shall, upon request of SELLER, promptly deliver to SELLER a written waiver of its rights under this Section in recordable form with respect to such Offered Option Property, and, if BUYER does not provide such waiver within ten (10) days after request, then SELLER, in addition to all other rights and remedies it may have, may solely execute and record such waiver, which shall be as effective as if BUYER executed the same.

c. The closing of the sale of Offered Option Property to the BUYER pursuant to this Section shall be made at the offices of SELLER on such date as may be agreed by the SELLER and the BUYER (but in no event later than the later of one hundred fifty (150) days following BUYER's notice of exercise of its Right of First Refusal as provided in **subsection b** above or the closing date specified in the Offer). Such sale shall be effected by the SELLER's delivery to the BUYER of commercially reasonable documentation that is necessary to evidence the transfer and conveyance of the Offered Option Property to be purchased by the BUYER and the payment to the SELLER of the purchase price in immediately available funds (or other mutually acceptable arrangement).

d. If BUYER declines to purchase the Offered Option Property or fails to respond to the Offer in a timely manner as prescribed above, the Offered Option Property may be sold by the SELLER in accordance with the terms of the Bona Fide Offer free and clear of the Option set forth in **Section 26** above and the "Right of First Refusal" set forth in this **Section 27**, both of which shall be deemed to be terminated with respect to such Offered Option Property. Any such sale shall be only to the Proposed Purchaser or its assignee (to the extent the Bona Fide Offer

permits such assignment), at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Purchaser than those specified in the Offer. Promptly after completing the sale to the Proposed Purchaser or its assignee, the SELLER shall provide notice of such sale to the BUYER. Any Offered Option Property not sold pursuant to the Bona Fide Offer shall again be subject to this Right of First Refusal. In no event shall any sale, transfer or conveyance of any portion of the Option Property not in accordance with this Agreement be deemed to cause a waiver of the Option or Right of First Refusal.

e. Intentionally Deleted.

f. The provisions of this **Section 27** shall terminate from and after BUYER's exercise of the Option in accordance with **Section 26**.

g. The provisions of this **Section 27** shall expire upon the expiration or termination of the Option.

h. In no event shall the provisions of this **Section 27** (i.e., the "Right of First Refusal") be assigned by BUYER, other than to TIITF, which assignment, in order to be effective, must be delivered to SELLER and include an assumption by TIITF, all in form and substance reasonably acceptable to SELLER.

i. The provisions in this **Section 27** shall survive the Closing.

28. MISCELLANEOUS

a. Headings. The headings contained in this Agreement are for convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

b. Severability. If any provision of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

c. Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any

rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

d. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, each of the parties irrevocably and unconditionally (1) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the court of the United States, Southern District of Florida; (2) consents to the jurisdiction of each such court in any suit, action or proceeding; (3) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (4) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.

f. Governing Law. This Agreement and all transactions contemplated by this Agreement shall be governed by, construed, and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

g. Interpretation. This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing this Agreement or any part thereof to be drafted.

h. Handwritten Provisions. Handwritten provisions inserted in this Agreement and initialed by the BUYER and the SELLER shall control all printed provisions in conflict therewith.

i. Entire Agreement. This Agreement and the Confidentiality Letter (which is incorporated by reference herein) contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No agreements or representations, unless incorporated in this Agreement shall be binding upon any of the parties.

No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

j. Waiver. Failure of BUYER to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right; but the same shall remain in full force and effect.

k. Time. Time is of the essence with regard to every term, condition and provision set forth in this Agreement. Time periods herein of less than six (6) days shall in the computation exclude Saturdays, Sundays and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. (E.S.T.) of the next business day.

l. WAIVER OF JURY TRIAL. AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, BUYER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS **SECTION 28.l**.

m. Successors in Interest. This Agreement shall be legally binding upon the Parties hereto and their heirs, legal representatives, successors and permitted assigns. This Agreement may not be assigned by either Party, without the other Party's prior written consent, which may be withheld in their sole and absolute discretion; provided, however, that (i) SELLER may assign all of their rights and obligations under this Agreement to a Person(s) who is controlled by stockholders who currently control more than 50% of the voting rights of Parent's outstanding stock pursuant to a Permitted Reorganization or to a Person(s) that acquire(s) all or substantially all of the assets of SELLER other than the citrus facility comprising approximately 500 acres) (subject to the Option and Right of First Refusal, to the extent still in effect); (ii) BUYER may collaterally assign all or a part of its interest in this Agreement and its rights hereunder

and thereunder to the lenders of any third party financing necessary to consummate the transactions contemplated hereby to the extent required by such funding sources, and (iii) BUYER may assign all or a part of its interest in this Agreement and its rights and obligations hereunder or thereunder to any governmental agency organized under the laws of the State of Florida, provided that such assignment will not extend the Closing Date. For purposes hereof, a "Permitted Reorganization" means a merger, consolidation or other capital reorganization or business combination transaction of the Parent with or into another Person such that: (1) the stockholders of Parent immediately prior to such transaction possess at least fifty percent (50%) of the voting power of such Person immediately after such transaction or (2) members of the board of directors of the Parent immediately prior to such transaction possess majority voting power of the board of directors of such Person immediately after such transaction, provided that in the event of (1) and (2) above, the surviving entity and its subsidiaries shall own all or substantially all of the assets of SELLER.

n. Lead Warning Statement. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. SELLER hereby advises BUYER that SELLER believes that there may be lead-based paint and/or lead-based paint hazards in residential structures that are being conveyed to BUYER in this transaction, however, SELLER has no reports or records pertaining to the same. By execution of this Agreement, BUYER acknowledges that it has received a ten-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazard and BUYER has received the pamphlet "Protect Your Family from Lead in Your Home".

o. Memorandum of Agreement. The Parties shall execute and deliver at Closing a "Memorandum of Agreement," in form and substance substantially similar to the document attached hereto as **Exhibit 28.o**, which shall be recorded in the public records of the applicable Counties memorializing the Option and the Right of First Refusal set forth in this Agreement, which shall be recorded at the cost and expense of BUYER; it

being understood and agreed that such Memorandum of Agreement shall be: (i) at all times subject and subordinate to any and all mortgages, deeds of trust, trust indentures, or other instruments evidencing a security interest upon the Option Property, which may now or hereafter affect any portion of the Option Property (subject, nonetheless to SELLER's obligation under the Option Purchase Agreement to satisfy or discharge any such instrument upon the closing of the acquisition of the Option Property by BUYER); (ii) during the Exclusive Period, subject and subordinate to the leases permitted under the terms of this Agreement (whether of record or not) and other matters of record entered into from and after the Closing, all as to the Option Property, and (iii) during the Non-Exclusive Period, subject and subordinate to any and all leases (whether of record or not) and other matters of record entered into from and after the commencement of such Non-Exclusive Period, all as to Option Property. Without limiting the automatic effectiveness of the foregoing subordination, within forty-five (45) days after written request by SELLER, BUYER hereby agrees to execute and deliver a subordination agreement, in form and substance reasonably acceptable to BUYER and SELLER, evidencing such subordination; provided, however that at Closing, BUYER shall execute and deliver such a subordination agreement in favor of SELLER's then current lender possessing a security interest in the Option Property in form and substance reasonably acceptable to BUYER, SELLER and SELLER's lender.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the date first written above.

SELLERS:

UNITED STATES SUGAR CORPORATION,
a Delaware corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker
Kay Brasecker

By:
Name: ROBERT H. BUKER JR.
As its: PRESIDENT & CEO
Date of Execution MAY 11, 2009

SBG FARMS, INC., a Florida corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker
Kay Brasecter

By:
Name: ROBERT H. BUKER JR.
As its: PRESIDENT
Date of Execution MAY 11, 2009

SOUTHERN GARDENS GROVES
CORPORATION, a Florida corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker
Kay Brasecker

By:
Name: RICKE A. KRESS
As its: PRESIDENT
Date of Execution MAY 11, 2009

ATTEST:

STATE OF FLORIDA
GOVERNING BOARD OF SOUTH FLORIDA WATER MANAGEMENT DISTRICT
SEAL
Established 1949

Secretary/District Clerk

BUYER:

SOUTH FLORIDA WATER
MANAGEMENT DISTRICT,
a public corporation created under Chapter
373, Florida Statutes

By:
Name: Earl Bukermann
As Its: Chairman
Date of Execution May 13, 2009

[JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC. FOLLOWS]

JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC.

The undersigned, on behalf of SOUTH CENTRAL FLORIDA EXPRESS, INC., a Florida corporation, hereby joins in and agrees to **Section 19.j.** of the Agreement for Sale and Purchase dated 5/09 by and among United States Sugar Corporation, SBG Farms, Inc., Southern Gardens Groves Corporation, collectively, as Seller, and South Florida Water Management District, as Buyer.

SOUTH CENTRAL FLORIDA EXPRESS, INC., a Florida corporation

Witness: _____
EDWARD ALMEIDA

Witness: _____
Kay Brasecker

By: _____

Name: MALCOLM S. WADE JR

As its: PRESIDENT

Date of Execution MAY 11, 2009

Exhibit B

LEASE AGREEMENT

BETWEEN

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

UNITED STATES SUGAR CORPORATION AND EACH OTHER LESSEE NAMED BELOW

This **LEASE AGREEMENT** (this "**LEASE**"), is entered into BETWEEN (herein called the "**Parties**" and each a "**Party**"): the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, with its principal office at 3301 Gun Club Road, West Palm Beach, Florida 33406, and whose mailing address is Post Office 24680, West Palm Beach Florida 33416-4680, as **LESSOR** ("**LESSOR**"); and each of the following, as **LESSEE**: UNITED STATES SUGAR CORPORATION, a Delaware corporation (the "**Parent**"), and SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation (the foregoing Parent and other Persons named as **LESSEE**, individually and collectively and jointly and severally, "**LESSEE**"), all with a mailing address of 111 Ponce DeLeon Avenue, Clewiston, Florida 33440.

WITNESSETH:

WHEREAS, the **LESSOR** is an agency of the State of Florida created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to enter into contracts with public agencies, private corporations or other persons, pursuant to Section 373.083, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to lease lands or interests in land, to which the **LESSOR** has acquired title, pursuant to Section 373.093, Florida Statutes.

WHEREAS, **LESSEE**, as seller, and **LESSOR**, as buyer, have entered into that certain Amended and Restated Agreement for Sale and Purchase dated as of [*___*] (the "Agreement for Sale and Purchase") for certain real property located in Hendry, Glades, and Palm Beach Counties, Florida, as described therein (the "Purchased Premises"). Unless otherwise defined herein, all capitalized terms used in this **LEASE** shall have the meanings assigned to the same in the Agreement for Sale and Purchase.

WHEREAS, concurrently herewith and pursuant to the Agreement for Sale and Purchase, **LESSOR** has acquired the Purchased Premises, which includes, among other real property, the real property described in **Exhibit "A"** attached hereto (the "Premises").

WHEREAS, pursuant to the Agreement for Sale and Purchase, **LESSOR** has agreed to lease the Premises to **LESSEE** for the Permitted Uses (as defined in **Paragraph 2.B.**) subject to the terms and conditions set forth herein and **LESSEE** has represented to **LESSOR** that it is qualified in all respects to operate the Premises under the Permitted Uses.

WHEREAS, the Governing Board of **LESSOR**, at its 2009, meeting has authorized entering into this **LEASE** with **LESSEE**.

WHEREAS, the Board of Directors of Parent, at its [*_____ ___*], 2009, meeting has duly authorized each **LESSEE** entering into this **LEASE** with **LESSOR**. [****NOTE:** ***depending on the final financing structure, revisions to the recitals to clarify the structure may be added.*** **]

NOW THEREFORE, in consideration of the duties, responsibilities, obligations and covenants herein contained to be kept and performed by the **LESSEE**, the **LESSOR** does hereby lease to the **LESSEE** the Premises in accordance with the following terms, conditions, covenants and provisions:

1. **Recitals:** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. **Use of Premises:**

A. [****TO BE INSERTED IN SUGAR LEASE ONLY– LESSOR** and **LESSEE** acknowledge that none of the crops (e.g., sugar cane), crop products or cane stubble are owned by **LESSOR** but shall be continued to be owned by **LESSEE**; provided however that any cane stubble existing on the Premises, as of the Expiration Date (as defined below) shall become the property of **LESSOR** in accordance with Paragraph 22).**] OR [****TO BE INSERTED IN CITRUS LEASE ONLY– LESSEE** and **LESSOR** acknowledge that (i) all citrus trees and groves are owned by **LESSOR** and **LESSEE** is, pursuant to this **LEASE**, entitled only to the fruit and (ii) none of the crops (e.g., citrus fruit) or crop products are owned by the **LESSOR****]. **LESSEE** may utilize the Premises solely for the Permitted Uses in accordance with the terms, conditions, covenants and provisions of this **LEASE**. **LESSEE** will not use or permit any use or entry upon the Premises for any other purpose. **LESSEE's** use of the Premises for the Permitted Uses shall be in accordance with the Best Management Practices (as defined below) and consistent with the industry standards. The Premises, including the improvements located thereon are being leased in their "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition. **LESSEE** has examined the Premises to its complete and total satisfaction and is familiar with the condition thereof, and accepts the same in their present condition. **LESSOR** has made no representations or warranties to **LESSEE** respecting the condition of the Premises. **LESSEE** has had an adequate opportunity to investigate the zoning of the Premises and is satisfied that it can use the Premises in the manner required by this paragraph. **LESSOR** makes no warranty or representation as to the use or potential use to which the Premises may be put.

B. For the purposes of this **LEASE**, the term "Permitted Uses" shall mean the following: (a) all agricultural operations on the Premises, (b) **LESSEE's** historical business

of planting, cultivating, farming, growing, harvesting, storing, fertilizing, transporting and removing [**CITRUS LEASE – citrus and sugar cane (to the extent permitted pursuant to a Conversion Plan (as defined in Paragraph 4.F below))**] [**SUGAR LEASE - sugar cane**]; (c) all uses incidental or related to the uses described in clause (b) above, including, without limitation, (i) the planting, cultivating, farming, growing, harvesting, fertilizing, removing, using and selling of appropriate rotation crops and related nursery operations, (ii) the operation of existing railroads adjacent to the Premises and (iii) preexisting residential uses; (d) rock mining as otherwise has been conducted by **LESSEE** solely for use on the Premises (and not for sale to any third party) in connection with its business operations; (e) tenant farming operations; (f) any other historical business operations of **LESSEE** related or ancillary to the agricultural business operations described in clause (b) above or other agreements or leases that are in existence as of the Commencement Date; and (g) any other uses not otherwise described herein for which **LESSEE** obtains **LESSOR's** prior written approval, which approval may be withheld in **LESSOR's** sole and absolute discretion.

C. During the Lease Term, **LESSEE** shall maintain its current level of security for the Premises.

D. Furthermore, **LESSEE** shall control and eradicate to the extent practicable, and shall prevent infestation of, Category I and Category II exotic/invasive pest plants and Class I & II prohibited aquatic plants as described on **Schedule "1"** and **Schedule "2"** attached hereto and made a part hereof ("Exotic Pest Plants"). The sale of any Exotic Pest Plants is strictly prohibited and shall be sufficient cause for immediate termination of this **LEASE**. **LESSEE** agrees that its use and occupancy of the Premises shall result in the land being managed and maintained in accordance with applicable Best Management Practices, provided, however, that in no event shall such Best Management Practices or the terms of this **LEASE** require **LESSEE** to remove Exotic Pest Plants from the Premises to the extent such removal is not consistent with past practices of **LESSEE** on the Premises.

E. **LESSEE** shall neither hunt, trap or capture any wildlife upon the Premises nor allow others to do so; provided, however, **LESSEE** through its principals, contractors and employees may control nuisance wildlife in compliance with all state laws.

F. Prescribed burning on the Premises may be done by **LESSEE** provided that each such prescribed burning shall: (a)(i) have been requested by **LESSEE** in writing, (ii) be approved by **LESSOR** in writing, and (iii) be managed by a state approved burn manager; or (b) be conducted without **LESSOR's** consent or notification, so long as such controlled burning is regulated under the Division of Forestry's burning program, including the programs for [**SUGAR LEASE - sugar cane burning**], [** CITRUS LEASE - citrus tree burning and sugar cane burning (to the extent sugar cane is grown pursuant to a Conversion Plan)**], agricultural container burning, etc. **LESSEE** shall not otherwise knowingly or deliberately set or cause to be set any fire or fires on the Premises.

G. There shall be no fertilization of the Premises, except for fertilization that is in compliance with the applicable Best Management Practices. Additionally there shall be no alterations, improvements or modifications of rangelands, wetlands, swamps or pastures of the Premises (including but not limited to mowing, chopping, disking, plowing, ditching, or digging

water holes), other than (i) as is common in the industry, consistent with **LESSEE**'s past practices and specifically allowed in the Best Management Practices, or (ii) is otherwise consented to in writing by **LESSOR**, which consent may be withheld in **LESSOR**'s sole and absolute discretion. **LESSEE** shall not cut or remove any standing green or fallen timber from the Premises, other than [**TO BE INSERTED INTO CITRUS LEASE ONLY - removal of citrus trees for disease control or otherwise**] in the ordinary course of **LESSEE**'s business consistent with past practices. **LESSEE** shall not, for any purpose, drive nails, spikes or staples into or otherwise deface or mar any tree on the Premises.

H. The application of herbicides, pesticides, or agricultural chemicals with respect to the Premises, shall comply with the applicable Best Management Practices and shall be limited to those chemicals specified therein.

I. Intentionally Deleted.

J. **LESSEE** shall adhere to all management practices described in **Schedule "3"** attached hereto and made a part hereof with respect to the Premises ("Best Management Practices").

K. [**TO BE INSERTED INTO SUGAR LEASE ONLY**] **LESSEE** shall at all times during the Lease Term continuously commence and continue all applicable planting and cultivation of the sugar cane crops, as and to the extent typically performed by **LESSEE** in **LESSEE**'s ordinary course of business consistent with past practices and in accordance with the Best Management Practices; provided, however, **LESSEE** is not obligated to continue planting or applicable cultivation with respect thereto after June 30, 2014.

[**TO BE INSERTED INTO CITRUS LEASE ONLY - **LESSEE** shall not be obligated to continue any planting or cultivation of any citrus crops on the Premises during the Lease Term**].

L. So long as **LESSEE** is not in Default under **Paragraphs 7(A)(1), (2) (solely with respect to the failure to pay real estate taxes as required in this LEASE), 3 or 4,** **LESSEE** shall have the right to collect and retain all rents derived from the Premises (inclusive of rents paid during the Lease Term under leases that were in effect prior to the Commencement Date); provided, however that: (i) any such rents collected by **LESSOR** during any period of Default shall be applied to any unpaid amounts due hereunder; (ii) **LESSOR** shall provide written notice to **LESSEE** revoking the license described in **Paragraph 2.M** below at the same time as it provides notice to the tenants directing such rents to be paid directly to **LESSOR**; and (iii) in the event that **LESSEE** has cured any such Default, **LESSEE** shall again have the right to receive such rents, whereupon **LESSOR** shall, by written notice to **LESSEE**, reinstate the license and direct such tenants to deliver their respective rent payments directly to **LESSEE**. **LESSOR** shall, on or before the Commencement Date and thereafter, from time to time, as reasonably requested by **LESSEE**, deliver to each tenant who has a right to occupy the Premises a letter, in form and substance reasonably acceptable to **LESSOR** and **LESSEE**, which directs such tenant to deliver their respective rent payments directly to **LESSEE** during the Lease Term.

M. In addition to the rights granted to **LESSEE** under this **LEASE**, including the provisions set forth in **Paragraph 2.L** above, during the Lease Term, **LESSOR** hereby grants to **LESSEE** a revocable license (which may only be revoked by **LESSOR** in the event of a Default as described in **Paragraph 2.L** above and shall be reinstated pursuant to the terms of such paragraph) granting to **LESSEE** all rights and interest of **LESSOR** under any leases or contracts that have been assigned to and assumed by **LESSOR** on the Closing Date (collectively, the "Related Contracts"), which shall be deemed to include the right to seek any recourse against the applicable third parties thereunder for failure to perform thereunder. As consideration for the foregoing license, **LESSEE** hereby agrees, during the Lease Term, to timely: (a) pay all sums directly to the appropriate parties under the Related Contracts and any New Agreements (as defined in Paragraph 33.P of this **LEASE**) that become payable and accrue thereunder during the Lease Term; and (b) perform the obligations of **LESSOR** under the Related Contracts and any New Agreements that arise and accrue during the Lease Term. If reasonably requested by **LESSEE**, **LESSOR** agrees to execute authorizations reasonably required to evidence and effectuate the foregoing. **LESSEE** hereby agrees to promptly give **LESSOR** copies of any default notices given or received by **LESSEE** in connection with the Related Contracts or New Agreements.

N. **LESSEE** shall not at any time during the Lease Term, directly or indirectly, hypothecate, mortgage or pledge any of the Premises or any of **LESSEE**'s right, title or interest under this **LEASE**.

3. **Lease Term:** The **LESSOR** hereby leases the Premises to the **LESSEE** for a lease term commencing [*_____*] (the "Commencement Date"), and terminating (unless earlier terminated pursuant to other provisions of this **LEASE**) at 11:59 p.m. on the next occurring May 1st [*or July 1st as to Citrus*] that follows the seventh (7th) anniversary of the Commencement Date, to wit [***SUGAR LEASE* - *_____**] and [***CITRUS LEASE* *_____**] (the "Initial Term").

A. In the event that **LESSOR** has not exercised its Option under the Agreement for Sale and Purchase to acquire the Option Property (as defined in the Agreement for Sale and Purchase) on or before the expiration of the Initial Term or if **LESSOR** has exercised such Option prior to such expiration and thereafter not acquired the Option Property for reasons other than an Option Default (as defined below), then the Initial Term shall be automatically extended, without the necessity of either Party providing any written notice to the other (unless earlier terminated pursuant to other provisions of this **LEASE**), for an additional three (3) years (the "First Renewal Term") so that the Lease Term (as defined below) for the Premises is extended to 11:59 p.m. on the next occurring [**SUGAR LEASE - May 1st**] or [**CITRUS LEASE - July 1st**] that follows the tenth (10th) anniversary of the Commencement Date, which extension shall be on the same terms and conditions set forth herein [**SUGAR LEASE - , including, without limitation, the Initial Rent (as defined in **Paragraph 5** of this **LEASE**). If **LESSOR** timely exercises its Option and **LESSOR**'s acquisition of the Option Property does not occur until after the expiration of the Initial Term, the Initial Term shall be deemed to be extended on the same terms and conditions hereunder, to the extent applicable, until the closing of such acquisition whereupon **subparagraph D** below shall govern. In the event that **LESSOR** has exercised its Option to acquire the Option Property prior to the expiration of the Initial Term and thereafter not acquired the Option Property due to Seller's

default beyond all applicable notice and cure periods under the Agreement for Sale and Purchase or the Option Purchase Agreement (as defined in the Agreement for Sale and Purchase) and provided that Buyer is not then in default under either of such agreements beyond all applicable notice and cure periods (such default(s), an "Option Default"), then (x) **LESSOR** will have the right to elect to change the Rent (effective as of the date of the Option Default) to "Fair Market Rent" determined in accordance with Paragraph 5 of this **LEASE**, (y) the Initial Term will not be extended and (z) this **LEASE** will terminate without further notice or action by **LESSOR** on (a) the expiration of the Initial Term or (b) earlier, as to portions of the Premises as harvested, on a block-by-block basis, for **LESSEE's** harvest that occurs during the last harvest year of the Initial Term.**]

B. In the event that the **LESSOR** has not exercised its Option under the Agreement for Sale and Purchase to acquire the Option Property on or before the tenth (10^{th}) anniversary of the Commencement Date) or if **LESSOR** has exercised such Option prior to such expiration and thereafter not acquired the Option Property for reasons other than an Option Default, then the First Renewal Term shall be automatically extended, without the necessity of either Party providing any written notice to the other (unless earlier terminated pursuant to other provisions of this **LEASE**), for an additional ten (10) years (the "Second Renewal Term"), so that the Lease Term for the Premises is extended to 11:59 p.m. on the next occurring [****SUGAR LEASE - May 1^{st}**] or [****CITRUS LEASE - July 1^{st}**] that follows twentieth (20^{th}) anniversary of the Commencement Date, which extension shall be on the same terms and conditions set forth herein [****SUGAR LEASE - , except that the Initial Rent hereunder shall be adjusted to "Fair Market Rent" as determined in accordance with **Paragraph 5** of this **LEASE**. If **LESSOR** timely exercises its Option and the acquisition of the Option Property does not occur until after the expiration of the First Renewal Term, the First Renewal Term shall be deemed to be extended on the same terms and conditions hereunder, to the extent applicable, until the closing of such acquisition whereupon **subparagraph D** below shall govern. In the event of an Option Default during the First Renewal Term, (x) **LESSOR** will have the right to elect to change the Rent (effective as of the date of the Option Default) to "Fair Market Rent" determined in accordance with Paragraph 5 of this **LEASE**, (y) the First Renewal Term will not be extended and (z) this **LEASE** will terminate without further notice or action by **LESSOR** (a) on the expiration of the First Renewal Term or (b) earlier, as to portions of the Premises as harvested, on a block-by-block basis, for **LESSEE's** harvest that occurs during the last harvest year of the First Renewal Term.**]

C. The Initial Term, First Renewal Term and Second Renewal Term, as applicable, are herein called the "Lease Term".

D. In the event that **LESSOR** acquires the Option Property, from and after the date of the closing of such acquisition, the Premises and the Option Property shall be governed by the terms of the New Lease (as defined in the Agreement for Sale and Purchase) in accordance with the provisions of the Agreement for Sale and Purchase. If the Option Property is not acquired after Buyer has exercised the Option due to Buyer's default under the Agreement for Sale and Purchase or the Option Purchase Agreement after expiration of applicable notice and cure periods, then this **LEASE** shall continue under the terms hereof as if the Option were not exercised.

E. The termination date of this **LEASE** as to any portion(s) of the Premises is herein called the "Expiration Date" solely with respect to such portion of the Premises being terminated, and otherwise refers to the date of expiration or earlier termination of this **LEASE**.

F. Commencing at least two (2) years prior to the expiration of the Second Renewal Term, if any, and provided that a Default by **LESSEE** does not then exist and would not exist with the giving of notice, the lapse of time or both, **LESSOR** and **LESSEE** agree to negotiate in good-faith an extension of the Lease Term with respect to the Premises, if **LESSOR** and **LESSEE** mutually determine such an extension would be mutually beneficial to the Parties, taking into consideration factors such as, impact on the local economy, **LESSOR's** intended use of the Premises and its construction plans and timelines therefor [** **SUGAR LEASE** ONLY - and the amount of sugarcane that is needed to keep the sugar mill owned by **LESSOR** or its successors and assigns economically viable, etc**]. Each Party shall bear its own costs and expenses and the fees of its consultants, contractors and advisors incurred in connection with any such negotiations. Either Party may terminate and withdraw from any such negotiations at any time in its absolute and sole discretion by notice to the other Party.

4. **Right to Terminate:**

A. Except as otherwise provided in **Paragraph 7.** of this **LEASE**, if either Party fails to fulfill its material obligations under this **LEASE** in a timely and proper manner, the other Party shall have the right to terminate this **LEASE** or exercise other rights and remedies hereunder after giving written notice of default to the applicable Party and an opportunity to cure the same as provided in this **Subparagraph 4.A.** An applicable Party that fails to fulfill its material obligations under this **LEASE** in a timely and proper manner (except as otherwise provided in **Paragraph 7.** of this LEASE) shall have forty-five (45) calendar days from receipt of notice from the other Party to remedy the deficiency. Notwithstanding the foregoing, if such deficiency cannot with due diligence be remedied by the applicable Party within such 45-day period, and if such Party diligently commences to remedy such deficiency within such 45-day period and thereafter prosecutes such remedy with reasonable diligence, the period of time to remedy such deficiency shall be extended to permit a cure period of one hundred and twenty (120) days in the aggregate so long as such Party prosecutes such remedy with reasonable diligence; provided, however that upon request of such Party, the other Party shall, from time to time, consent in writing to an extension of such 120 day period, which consent shall not be unreasonably withheld, so long as the applicable Party is diligently proceeding to cure such deficiency. Such curing Party's request for an extension of time to cure shall be accompanied by a reasonably detailed schedule for completing such cure. A Party shall not be deemed to be in default under the terms of this **LEASE** unless and until a Default (as defined in **Paragraph 7** below) has occurred.

B. **[** FOR INSERTION INTO CITRUS LEASE ONLY** – At any time during the Lease Term, **LESSEE**, in its sole discretion, shall have the right to terminate this **LEASE** as to any portion of the Premises, or all of the Premises, by giving a written termination notice to **LESSOR** at least one (1) year prior to the actual date of termination therefor, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands (such portions of the Premises as to which the Lease has been terminated shall be referred to herein as the "Released Premises").

Notwithstanding the foregoing, in the event that **LESSEE** terminates this **LEASE** as provided in this subparagraph, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis or the following July 1st] (i.e., **LESSEE**'s final harvest), whichever is earlier.**]

[**ALTERNATE SUBPARAGRAPH B FOR INSERTION INTO SUGAR LEASE ONLY –LESSEE shall have the right, in its sole discretion, to terminate all or portions of this **LEASE** as follows:

(1) From and after January 1, 2011, **LESSEE**, shall have the right to terminate this **LEASE** as to all but not less than all of the Premises by giving a written termination notice to **LESSOR** on or before June 10, 2011 and each June 10th of each calendar year thereafter, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the Premises, whereupon this **LEASE** shall terminate on May 1st of the next calendar year following such notice. For example, if **LESSEE** gives a termination notice to **LESSOR** on June 4, 2011, then this **LEASE** shall terminate on May 1, 2012 with respect to the Premises.

(2) At any time during the Lease Term, and provided that **LESSEE** has not exercised its right under **subparagraph (3)** with respect to the applicable portion of the Premises, **LESSEE** shall have the right to terminate this **LEASE** as to any portion of the Premises which it intends to leave fallow and as to which it has given a written termination notice to **LESSOR** setting forth a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands, which notice shall be given no later than one hundred eighty (180) days prior to the scheduled date of commencement of the harvest of the portion of the Premises to be left fallow pursuant to such notice; provided, however, that such termination may not occur pursuant to this **subparagraph (2)** prior to June 30, 2014. In the event that **LESSEE** terminates this **LEASE** as provided in this **subparagraph (2)**, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis, or the following May 1st, whichever is earlier.

(3) At any time during the Lease Term, and in addition to **LESSEE**'s termination rights under **subparagraphs (1)** and **(2)**, **LESSEE**, in its sole discretion, shall have the right to terminate this **LEASE** as to any portion of the Premises, or all of the Premises, by giving a written termination notice to **LESSOR** at least one (1) year prior to the actual date of termination therefor, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands (such portions of the Premises as to which the Lease has been terminated shall be referred to herein as the "Released Premises"); provided, however, that such termination may not occur pursuant to this **subparagraph (3)** prior to June 30, 2014. Notwithstanding the foregoing, in the event that **LESSEE** terminates this **LEASE** as provided in this subparagraph, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis, or the following May 1st (i.e., **LESSEE**'s final harvest), whichever is earlier.**]

C. Intentionally Deleted

D. In the event of a termination of this **LEASE** by **LESSEE** with respect to a portion of the Premises pursuant to [**CITRUS LEASE – **subparagraph B**] [**SUGAR LEASE - **subparagraphs B.(2) and (3).****], (x) **LESSEE** shall be deemed to have a non-exclusive right of access, utility service and drainage (subject to reasonable relocation by **LESSOR**) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage lines and/or areas within the Released Premises as reasonably necessary for **LESSEE** to continue to have access to, utilities and drainage on the remaining portion of the Premises that is then still subject to the terms of this **LEASE** and (y) **LESSOR** shall be deemed to have a non-exclusive right of access, utility service and drainage (subject to reasonable relocation by **LESSEE**) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage lines and/or areas within the remaining Premises subject to this **LEASE** as reasonably necessary for **LESSOR** and its tenants, as applicable. to have access to, utilities and drainage on the Released Premises.

E. In the event that **LESSEE** terminates this **LEASE** in accordance with **subparagraph B** above, then, in such event, **LESSEE** agrees to reasonably cooperate with **LESSOR** and any successor tenants of the Released Premises, including with respect to planting, cultivation and harvesting, in order for such tenants to have access to the Released Premises over the Premises – if such access is the typical method of accessing the Released Premises (upon terms and conditions provided in this **LEASE** for access by private parties) - and to reasonably coordinate such operations with **LESSEE**'s operations on the remaining portion of the Premises.

F. [**INSERTION INTO SUGAR LEASE ONLY – Subject to the notice requirements set forth below, **LESSOR**, in its sole discretion. and without payment or consideration of any kind to **LESSEE** whatsoever, and in addition to **LESSOR**'s other termination rights in this **LEASE**, shall have the right to terminate this **LEASE** as follows:

(1) at any time during the Lease Term, this **LEASE** may be terminated as to portion(s) of the Premises in an amount not to exceed ten thousand (10,000) acres in the aggregate (in portions of land which shall be comprised of no less than two thousand (2,000) contiguous acres, except the last portion of Premises so terminated may be less in acreage if the aggregate acreage of prior terminations is greater than 8,000 acres), which are to be used in connection with a South Florida Water Management District ("SFWMD") funded project approved by the Governing Board of SFWMD ("Project") to be constructed on the Premises or in exchange for property necessary for a Project (subject to **subparagraph (6)** below);

(2) in addition to **LESSOR**'s rights under subparagraph (1) immediately above, at any time during the Second Renewal Term, this **LEASE** may be terminated as to portion(s) of the Premises in an amount not to exceed ten thousand (10,000) acres in the aggregate (in portions of land which shall be comprised of no less than two thousand (2,000) contiguous acres, except the last portion of Premises so terminated may be less in acreage if the aggregate acreage of prior terminations is greater than 8,000 acres), which are to be used in connection with a Project to be constructed on the Premises or in exchange for property necessary for a Project (subject to **subparagraph (6)** below);

(3) in the event that **LESSOR** acquires the Option Property pursuant to exercise of its Option under the Agreement for Sale and Purchase or if **LESSOR** has not acquired the Option Property as a result of an Option Default, then:

(a) from and after **LESSOR's** acquisition of the Option Property or an Option Default, **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises or, to the extent acquired by **LESSOR**, the Option Property (in which event the applicable termination shall occur under the New Lease), to be used (i) in connection with a Project to be constructed on the Premises or the Option Property, (ii) in exchange for no more than 2,000 contiguous acres in the acreage located in the approximately 25,000 acre parcel depicted in **Exhibit 4.F.6.** which is necessary for a Project to be constructed within such 25,000 acre parcel, provided, however, that prior to the expiration of the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** for such exchanges only as to 1,000 acres or (iii) in exchange for all or any portion of the Premises that is adjacent to the "L-8 Canal" for a Project built primarily to provide water quality treatment for water discharges from the S-5A Basin; and

(b) after the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises or, to the extent acquired by **LESSOR**, the Option Property (in which event the applicable termination shall occur under the New Lease), to be used in exchange for property for a Project to be located within the area shown on **Exhibit 4.F.3(b)** – it being agreed by the Parties that if the **LESSOR** constructs multiple Projects within the area known as the "Everglades Agricultural Area" for restoration purposes, then **LESSOR** will, to the extent practicable, schedule the construction of such Projects that require portions of the Premises to be released from this **LEASE** pursuant to the provisions hereof, after the construction of such other Projects;

(4) after the expiration of the Initial Term, this **LEASE** may be terminated as to portion(s) of the Premises identified on **Exhibit 4.F.(4)** (individually or collectively, the "Transition Acres") in connection with a Project on or transfers of all or any portion of the Transition Acres by **LESSOR** to municipalities or other governmental entities (each, a "Governmental Transferee"). Any such transfer shall be made by **LESSOR** to the Governmental Transferee pursuant to the terms of a transfer agreement between **LESSOR** and Governmental Transferee, to which will be attached a form of lease agreement with respect to the applicable portion of the Transition Acres between Governmental Transferee and **LESSEE** reasonably acceptable to both **LESSOR** and **LESSEE**, setting forth the termination of such Transition Acres from this **LEASE** and providing that termination of such lease by Governmental Transferee for reasons other than a default by **LESSEE** thereunder shall be subject to Governmental Transferee providing the termination notices required under **subparagraph (8)** and thereafter under **subparagraph (10)** if LESSEE exercises its right under **subparagraph (10)** to continue to lease the Transition Acres to be terminated, in connection with the Governmental Transferee's use of relevant portion of the Transition Acres for a funded and approved development or other local government project. In no event shall the Governmental Transferee be subject to the LESSEE's ROFR under Paragraph 39 of this **LEASE**.

(5) Intentionally Deleted

(6) Prior to **LESSOR's** acquisition of the Option Property pursuant to the Option, during the Lease Term: (a) **LESSOR** shall be permitted to terminate this **LEASE** for no more than 2,000 contiguous acres in the acreage located in the approximately 25,000 acre parcel depicted in **Exhibit 4.F.6.** in connection with exchanges necessary for a Project to be constructed on the Premises, provided, however, that prior to the expiration of the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** for such exchanges only as to 1,000 acres; and (b) **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises that is adjacent to the "L-8 Canal" in exchange for property for a Project built primarily to provide water quality treatment for discharges from the S-5A Basin - provided, however that the portions of the Premises as to which this **LEASE** may be terminated under clauses (a) or (b) are subject to the limitations of (and part of the acreages described in) **subparagraph (1)** and **subparagraph (2)** above.

(7) From and after June 30, 2014 until the Expiration Date, if **LESSEE** (a) has allowed fallow fields to exist on the Premises and (b) has identified in a written notice to **LESSOR** the fields that **LESSEE** intends to abandon (the "Applicable Premises"), **LESSOR** shall have the right, in its sole discretion and in addition to its other termination rights under this **LEASE**, to terminate this **LEASE** with respect to the Applicable Premises upon fifteen (15) days written notice to the **LESSEE** and **LESSEE** shall thereupon vacate the Applicable Premises within fifteen (15) days of such written notice in accordance with **Paragraph 22.** of this **LEASE** or be deemed to be holding over pursuant to **Paragraph 23.** of this **LEASE**. From and after the date of the termination of this **LEASE** for all or any portion of the Applicable Premises as provided in this **Paragraph 4.F.(7)**, the annual Rent shall be reduced by the then existing Rent per acre multiplied by the acreage of such released portion of the Premises.

(8) In the case of each of **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)** above, in order for a termination to be effective (including any termination for exchanges permitted thereunder), **LESSOR** shall provide written notice of its intention to terminate the **LEASE** with respect to any portion of the Premises, at least two (2) years prior to the May 1^{st} on which **LESSOR** intends that such termination be effective (the "First Notice"), and then again at least one (1) year prior to the May 1^{st} on which **LESSOR** intends such termination to be effective (the "Second Notice"), whereupon this **LEASE** shall terminate as to such portion(s) of the Premises so noticed on the May 1^{st} which is at least two (2) calendar years following the First Notice; it being understood that if **LESSOR** provides a First Notice but does not subsequently send a Second Notice at least one year prior to the May 1^{st} termination date specified in the First Notice, then no termination shall occur with respect to such portion of the Premises until **LESSOR** provides a second notice at least one (1) year prior to the May 1^{st} on which such termination will be effective and confirming the lands (or portion thereof) designated in the First Notice to be terminated from this **LEASE**.

(9) In the event of any such termination by **LESSOR** pursuant to the above **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)**, (x) **LESSEE** shall be deemed to have a non-exclusive right of access, utility service and drainage (if necessary)(with provisions for relocation thereof) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage areas and lines within the portions of the Premises so terminated by **LESSOR** as reasonably necessary for **LESSEE** to continue to

have access, utilities and drainage for the remaining portion of the Premises that is then still subject to the terms of this **LEASE** and (y) **LESSOR** and its tenants, if any, shall be deemed have the right of access, utility service and drainage (if necessary) (with provisions for relocation thereof) over and across paved or unpaved roadways or pathways, utility/drainage areas and lines within the remaining portion of the Premises subject to this **LEASE** as reasonably necessary for **LESSOR** and its tenants to continue to have access, utilities and drainage for the portions of the Premises so terminated by **LESSOR**.

(10) Notwithstanding the foregoing, **LESSEE**, at **LESSEE**'s risk, may elect, by prior written notification to **LESSOR** provided not less than one hundred (180) days prior to the effective date of any termination by **LESSOR** pursuant to this **Paragraph 4.F.**, to continue farming operations on the portion of the Premises as to which this **LEASE** has been terminated pursuant to **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)** above, as applicable, until **LESSOR**, in its sole and absolute discretion: (x) notifies **LESSEE** in writing that such farming operations are incompatible with the construction of the applicable Project and directs **LESSEE** to cease operations on the date set forth in such notice; or (y) in the event that the portions of the Premises being removed from this **LEASE** are being exchanged with property owned by another party for a Project, notifies **LESSEE** in writing that the farming operations of such property owned by such other party are incompatible with the construction of the applicable Project and that such other party has been notified of such in writing and has been directed to vacate its property and that **LESSEE** is directed to cease operations on the date set forth in such notice. If **LESSEE** elects to continue farming operations notwithstanding any termination notice by **LESSOR** pursuant to **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)**, the **LEASE** Term with respect to such portions of the Premises shall be extended to allow **LESSEE** to continue such farming operations, but will terminate on the earliest of 11:59 p.m. on the next occurring May 1st that follows the twentieth (20th) anniversary of the Commencement Date or upon the occurrence of (x) or (y) above; provided, however, that as consideration for such extension of the Lease Term, the payment and performance terms, conditions and obligations under this **LEASE**, and all rights and remedies hereunder, shall remain in full force and effect with respect to each portion of the Premises **LESSEE** continues to farm pursuant to this **subparagraph (10)**. Such extension of the Lease Term shall automatically terminate upon the occurrence of any Default by **LESSEE** under this **LEASE** or the date of set forth in **LESSOR's** termination notice as provided in (x) or (y) above. From and after the date **LESSEE** vacates a portion of the Premises in accordance with any provision of this **LEASE** which permits termination with respect to a portion of the Premises, the annual Rent shall be reduced by the applicable Rent, multiplied by the acreage of the applicable portion of the Premises so terminated. **LESSOR** and **LESSEE** hereby agree to use mutually reasonable efforts in order for **LESSOR** to provide **LESSEE** with as much time as possible when giving its notice to vacate the portion of the Premises so released, as provided in this **subparagraph (10)**, it being the intent of the Parties to allow **LESSEE** to harvest as many crops as reasonably practicable before the farming operation are incompatible with the construction of a Project as determined by **LESSOR** in its absolute and sole discretion.**]

*[**ALTERNATE 4.F. TO BE INSERTED INTO CITRUS LEASE ONLY- LESSOR, in its sole discretion, and without payment or consideration of any kind to LESSEE whatsoever, shall have the right to terminate this LEASE for all or any portion of the Premises upon notice prior to any July 1st, whereupon this LEASE shall terminate as to such portion(s) of the*

Premises so noticed as they are harvested after such July 1st, subject to the requirement that all such harvesting shall be completed no later than June 30 of the following year, as of which day ***LESSEE*** *shall have vacated the terminated Premises.* ***LESSEE*** *shall, upon receipt of such termination notice from* ***LESSOR****, prepare and deliver to* ***LESSOR*** *a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands. Notwithstanding the foregoing, if at any time during the Lease Term,* ***LESSOR*** *and* ***LESSEE*** *have mutually agreed to a plan specifying the acreage and location of any portion of the Premises to be converted to sugarcane planting and cultivation, the schedule for effecting such conversion, the Rent, termination rights and other applicable terms and conditions thereof (the "Conversion Plan"), the Parties shall be governed by the Conversion Plan in respect of the portion of the Premises converted to sugarcane planting and cultivation. Notwithstanding the foregoing,* ***LESSOR*** *may only terminate this* ***LEASE*** *with respect to the portion of the Premises having approximately twenty (20) acres described in* ***Exhibit 4.F*** *upon the earlier to occur of (v)* ***LESSEE*** *fails within thirty (30) days after* ***LESSOR's*** *written request to provide reasonable information about the expected duration of the experimental citrus project being conducted thereon as of the Commencement Date; (x) the next occurring July 1st that follows the tenth (10th) anniversary of the Commencement Date, (y) the completion, failure or abandonment of the citrus project or (z) one year after* ***LESSOR's*** *notice to* ***LESSEE*** *of the termination of this* ***LEASE*** *because such experiment is incompatible with construction of a Project on the portion of the Premises that is within the immediate vicinity of such 20-acre parcel.*

G. In the event any portion of the Premises is transferred with a reservation of **LESSEE**'s leasehold rights as provided for in this **Paragraph 4, LESSOR** and **LESSEE** agree that they shall record a memorandum of this **LEASE** in the public records of the applicable Counties memorializing the leasehold reservations set forth in this **Paragraph 4** such that each applicable leasehold reservation is binding on such transferee, **LESSOR, LESSEE** and their respective successors and assigns.

5. **Rent:**

A. *[**TO BE INSERTED INTO CITRUS LEASE ONLY - **LESSOR** and **LESSEE** acknowledge and agree that, during the Lease Term, no Rent is due hereunder, unless **LESSEE** converts all or any portion of the Premises from citrus groves to sugarcane fields in accordance with the terms of a Conversion Plan, in which event from and after the date of such conversion **LESSEE** shall pay, in advance, to **LESSOR** a quarterly rental in the amount specified in the Conversion Plan representing twenty-five percent (25%) of the annual rental rate specified in the Conversion Plan (the "Initial Rent") for the portion of the Premises so converted to sugarcane planting and cultivation.**]*

[****ALTERNATE SUBPARAGRAPH A TO BE INSERTED INTO SUGAR LEASE ONLY** - As consideration for the rights conferred upon **LESSEE** by **LESSOR** pursuant to this **LEASE**, from and after the Commencement Date until the earlier to occur of (i) the expiration of the First Renewal Term; or (ii) the date of **LESSOR's** acquisition of the Option Property under the Option, **LESSEE** shall pay, in advance, to **LESSOR** a quarterly rental in the amount of * _____ * representing twenty-five percent (25%) of the One Hundred Fifty and No/100 Dollars ($150.00) per acre multiplied by [_____] gross acres [*NOTE – ACTUAL ACREAGE OF SUGAR CANE PORTION OF PREMISES FROM THE FINAL APPROVED

SURVEYS SHALL BE INSERTED AT CLOSING*] (the "Initial Rent") (it being understood and agreed that the Rent due hereunder may change from time to time on a pro-rata basis (based upon acreage) as this **LEASE** is terminated as to portions of the Premises as provided in this **LEASE** for reasons other than a Default). In the event that **LESSOR** has not acquired the Option Property under the Option, for reasons other than an Option Default, the Initial Rent hereunder shall be adjusted to be the "Fair Market Rent" for the Premises on the next occurring May 1st that follows the tenth (10th), thirteenth (13th), and sixteenth (16th) anniversaries of the Commencement Date, and be determined as follows:

(1) No later than one (1) year prior to the commencement of the Second Renewal Term, **LESSOR** shall provide written notice to **LESSEE** containing an original, signed appraisal dated within thirty (30) days of such notice setting forth the **LESSOR's** proposed fair market rent for the Premises (the "**LESSOR's** Proposed FMR"). The appraisal must comply with the statutorily mandated appraisal standards (to the extent applicable to **LESSOR**) and must have been performed by an appraiser meeting the Appraiser Requirements set forth in **Paragraph 5.A.(4)** ("**LESSOR's** Appraisal").

(2) Within sixty (60) days after receipt of **LESSOR's** Proposed FMR), **LESSEE** shall elect to either: (i) accept **LESSOR's** Proposed FMR as the Fair Market Rent; or (ii) deliver to **LESSOR** an original, signed appraisal setting forth **LESSEE's** proposed fair market rent for the Premises (the "**LESSEE's** Proposed FMR"), which appraisal must be performed by an appraiser meeting the Appraiser Requirements set forth in **Paragraph 5.A.(4)** and must be dated within sixty (60) days of **LESSEE's** receipt of **LESSOR's** Proposed FMR ("**LESSEE's** Appraisal").

(3) If **LESSEE** elects to obtain **LESSEE's** Appraisal under **subparagraph A(2)** above, then:

(a) In the event **LESSOR's** Proposed FMR is equal to or more than ninety percent (90%) and less than or equal to one hundred ten percent (110%) of **LESSEE's** Proposed FMR, then the "Fair Market Rent" shall be deemed to be the average of **LESSOR's** Appraisal and **LESSEE's** Appraisal (i.e., the sum of both proposed rents divided by two (2)).

(b) In the event **LESSOR's** Proposed FMR is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of **LESSEE's** Proposed FMR, then within fifteen (15) days after **LESSEE's** delivery of **LESSEE's** Appraisal to **LESSOR**, **LESSOR's** appraiser and **LESSEE's** appraiser must select a third (3rd) appraiser meeting the Appraiser Requirements set forth below (the "Third Appraiser"). The Third Appraiser shall perform its appraisal of its proposed fair market rent for the Premises within sixty (60) days of being selected by **LESSOR's** appraiser and **LESSEE's** appraiser. Once such appraisal is complete, the average of the two (2) closest appraisals in terms of fair market rent shall be deemed to be the "Fair Market Rent".

(4) Unless otherwise agreed to writing by **LESSOR** and **LESSEE**, each of the appraisers set forth above shall be M.A.I. certified appraisers, having at least ten (10)

years experience in appraising the fair market rental value of agricultural property in Palm Beach County, Florida (the "Appraiser Requirements").

(5) **LESSOR** and **LESSEE** shall each be responsible for the fees, costs and expenses of their respective appraiser. The fees, costs and expenses of the Third Appraiser and any mediation to select the same as provided in **subparagraph (6)** below shall be shared equally by **LESSOR** and **LESSEE**.

(6) If **LESSOR**'s appraiser and **LESSEE**'s appraiser fail to appoint the Third Appraiser within the time and in the manner prescribed in **subparagraph (3)(b)** above, then **LESSOR** and/or **LESSEE** shall promptly apply to the Palm Beach County office of Mediation, Inc. (or if such company is no longer in business, another mediation company with offices in Palm Beach County) for the appointment of the Third Appraiser. Within five (5) days of receipt of notice from one Party that such mediation application has been filed, each Party shall submit the names of up to three (3) appraisers meeting the Appraisal Requirements for the mediator to select. The mediator shall be instructed by either Party to select the Third Appraiser within ten (10) days after receipt of such names. The failure of a Party to timely submit any names constitutes a waiver of the right to so submit such names and the mediator shall select the Third Appraiser from the list of names that was timely submitted.

The Initial Rent and Fair Market Rent, as may be applicable, shall be referred to individually and collectively, as the "Rent". **LESSEE** agrees to pay Rent to **LESSOR**, without notice, offset, deduction, or set-off. Initial Rent shall be payable (a) on the Commencement Date on a pro-rated basis based on the number of days for the period beginning on the Commencement Date through and including the last day of the calendar quarter in which the Commencement Date falls and (b) on the first day of each calendar quarter (i.e. January 1st, April 1st, July 1st, and October 1st) thereafter, through and including the final calendar quarter of the First Renewal Term, if **LESSOR** does not acquire the Option Property, or the date of closing of the acquisition of the Option Property by **LESSOR**, if **LESSOR** so acquires the Option Property, together with all applicable sales and use taxes (it being agreed that the Rent due for the last or any interim calendar quarter shall be appropriately adjusted and prorated). After the Fair Market Rent is determined in accordance with **Paragraph 5.A.**, Rent shall be subject to yearly adjustment for each subsequent twelve-month period of the Lease Term in accordance with **subparagraph F** below until the Fair Market Rent determination is again applicable (i.e., on the next occurring May 1st that follows the thirteenth (13th) and sixteenth (16th) anniversaries of the Commencement Date), and shall be payable quarterly in accordance with the schedule, together with all applicable sales and use taxes.**]

B. In addition, **LESSEE** shall be responsible for payment of any and all Additional Rent (as defined in **Paragraph 5.D.** below) throughout the Lease Term as and when due under the terms of this **LEASE**.

C. All payments of Rent, as well as all other amounts due under this **LEASE** from **LESSEE** to **LESSOR** shall be made to **LESSOR** at the following address:

South Florida Water Management District
Attention:_____

Post Office Box 24680
3301 Gun Club Road
West Palm Beach, Florida 33406

RE: Contract #_____

D. This **LEASE** shall be totally and absolutely net to **LESSOR**. In addition to the Rent and Additional Rent stated above, **LESSEE** shall pay all charges for gas, water, sewer, waste removal, dumpster charges, janitorial services, electricity, telephone, and other utility services used by **LESSEE** in connection with the Premises during the Lease Term and any and all other costs, expenses, taxes or obligations of every kind related to the Premises and the use, operation, occupancy thereof during the Lease Term, including obligations arising under recorded or unrecorded documents encumbering or relating to the Premises, if any (to the extent such recorded or unrecorded documents exist on the day immediately preceding the Commencement Date). Without limiting the foregoing, if any charges, costs, expenses, taxes or other monetary obligations of **LESSEE** under this **LEASE** are not paid by **LESSEE** as and when due, after expiration of all applicable grace and notice periods, **LESSOR**, without limiting any of its other rights and remedies under this **LEASE**, shall have the right, but not the obligation, to pay any of the foregoing, and the amount of the expense or cost of any such obligations so paid by **LESSOR** shall thereupon become due to **LESSOR** from **LESSEE** within five (5) days following **LESSOR's** written demand, together with interest accruing on such amount at the highest rate allowed by law if not paid to **LESSOR** within such five (5) day period, as "Additional Rent".

E. If any Rent due from **LESSEE** to **LESSOR** hereunder is not received by **LESSOR** on or before the date due, then, in addition to all other rights and remedies available to **LESSOR** under this **LEASE**, **LESSOR** at **LESSOR's** sole option may either: (i) charge **LESSEE** a late fee equal to five percent (5%) of the installment of Rent not paid when due; or (ii) charge interest on the installment of Rent not paid when due at the highest rate allowed by law from the date due until the date received by **LESSOR** in immediately available funds.

F. [**TO BE INSERTED INTO SUGAR LEASE ONLY - The yearly adjustment to the Fair Market Rent for the applicable twelve (12) month periods after determination of the Fair Market Rent in accordance with **Paragraph 5.A.** shall be determined, as follows:

The Fair Market Rent shall be adjusted to the extent that the Producer Price Index for "Raw Cane Sugar and Byproducts", as published in the U.S. Department of Labor, Bureau of Labor Statistics, based on a 1982 base year value of 100 ("PPI") for the average of the twelve (12) calendar month period immediately preceding the new twelve (12) calendar month period of the Lease Term ("Comparison Period") differs from the PPI for the corresponding average of the twelve (12) month calendar period that occurs immediately prior to the Comparison Period of the Lease Term ("Base Period"). If the average PPI for the Comparison Period is different from (i.e., more than or less than) the average PPI for the Base Period, then the Rent for the new year shall be changed upward or downward, as appropriate, by the same percentage as the average PPI has changed upward or downward, as appropriate, from the Base Month. Since the monthly PPI that comes out is preliminary and subject to revision four months after original publication,

the final determination of the average PPI for the applicable twelve (12) month period will not be made until it is final. The Rent paid for any new twelve (12) month period will be based on the preliminary average PPI and then will be finally adjusted when the PPI becomes final for the applicable period.

As an example of yearly adjustment in year 2, assume that the Fair Market Rent in year 1 is $150/acre and that final average PPI for the 12-month Base Period immediately preceding the 12-month period that represents year 1 is 100 and that the final average PPI for the Comparison Period which is the 12-month period immediately prior to the commencement of year 2 (i.e., which is the 12-month period comprising year 1) is 137. The Rent for year 2 would be adjusted upward by 137-100 = .37 x $150/acre = $55.5/acre. So the new Rent commencing year 2 would be $150/acre + $55.5/acre = $205.5/acre.

As an example of yearly adjustment in year 3, assume that the Rent for year 2 is $205.5/acre as in the preceding example and assume that the final average PPI for the Base Year in year 2 is 147. The Rent for year 3 would be adjusted upward from the Rent for year 2 by 147-137 = 10/137 =.0729 rounded to .073 x $205.5/acre = $15/acre. So the new Rent of year 3 would be $205.5/acre + $15/acre = $220.5/acre.**]

G. In the event **LESSOR** exercises the Option, then at the closing of the acquisition of the Option Property, the Parties will execute the New Lease in accordance with the terms of the Agreement for Sale and Purchase and thereafter the Premises and the Option Property will be governed by the terms of the New Lease.

6. **Real Estate Taxes:**

A. **LESSEE** understands and agrees that upon execution of this **LEASE**, the Premises shall be placed upon the tax rolls of the county in which the Premises is located without state government exempt status, but with any agricultural use exemption that **LESSEE** obtains, provided that **LESSEE** shall be solely responsible for obtaining and maintaining the agricultural exemption. **LESSOR** agrees that it will not take any affirmative action during the Lease Term which removes the agricultural use exemption. **LESSOR** may, in **LESSOR'S** sole and absolute discretion, record a Memorandum of **LEASE**, executed by the **LESSOR**. **LESSEE** shall pay all real property taxes, intangible property taxes and personal property taxes, as well as all assessments, including but not limited to pending, certified, confirmed and ratified special assessment liens, accrued or levied with respect to the Premises or this **LEASE** during the Lease Term. The amount of taxes or assessments will be determined by the county property appraiser. **LESSEE** acknowledges that it shall be liable for such real property taxes, personal property taxes and intangible taxes, and assessments as are applicable for the Premises and this **LEASE** during the period in which this **LEASE** is in effect.

B. **LESSEE** shall pay such taxes and assessments promptly upon receipt of an assessment notice from the taxing authority but no later than their due date, and shall furnish proof of such payment to the **LESSOR**'s Division of Procurement and Contract Administration (see **Paragraph 5.B.** above) within 30 days of payment. Any penalties or late fees incurred for failure to pay said taxes and assessments shall be the responsibility of the **LESSEE**.

C. With respect to **LESSEE**'s obligation to pay real estate taxes under this **LEASE**, in the event the assessing authority permits any tax assessments to be paid in installments, **LESSEE** may exercise the option to pay the same in installments and shall pay all such installments that relate to the Lease Term as the same respectively become due and before they become delinquent, and provided that any such assessments which relate to a fiscal period for the taxing authority, part of which period is included in the Lease Term and a part of which is included in a period of time prior to or after the Lease Term, shall be allocated and prorated between **LESSOR** and **LESSEE** as of the Expiration Date of this **LEASE**. Taxes shall be prorated based on the tax for the year of the Expiration Date with due allowance made for exemptions and/or special classifications, if any. If the assessment for the year of the Expiration Date is not available, then taxes will be prorated on the prior year's tax. Any tax proration based on an estimate shall be subsequently readjusted at the request of either Party upon receipt of a tax bill. Upon the Expiration Date, **LESSEE** shall pay all real property taxes accrued with respect to the Premises in accordance with Section 196.295, Florida Statutes, if applicable. The provisions of this **subparagraph** shall survive the Expiration Date.

D. **LESSEE** shall have the right to contest the amount or validity of any real property taxes or any assessment liens ("Tax Claims"), by appropriate legal proceedings in good faith and with due diligence, provided that this shall not be deemed or construed in any way as relieving, modifying or extending **LESSEE**'s covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner provided in this **LEASE** or operate to relieve **LESSEE** from its other obligations hereunder, and shall not cause the sale of the Premises, or any part thereof, to satisfy the same. **LESSOR** agrees to join in any such proceedings if the same is necessary or required by **LESSEE** to legally prosecute such contest of the validity of such Tax Claims upon the reasonable request of **LESSEE**; provided, however, **LESSOR** will not be required to join in any such proceeding wherein the Tax Claims are imposed by **LESSEE**, provided **LESSOR** does not require its own joinder in connection with such Tax Claims. **LESSEE** shall be entitled to any refund of any Tax Claims and such charges and penalties or interest thereon which have been paid by **LESSEE**. In the event that **LESSEE** fails to pay any Tax Claims when due or fails to diligently prosecute any contest of the same, **LESSOR** may, upon thirty (30) days advance written notice to **LESSEE**, pay such charges together with any interest and penalties and the same shall be repayable by **LESSEE** to **LESSOR** pursuant to **Paragraph 5.C** above; provided that, should **LESSOR** reasonably determine that the giving of such notice would risk loss to the Premises, or portion thereof, then **LESSOR** shall give such written notice as is appropriate under the circumstances. Nothing herein shall be deemed to limit **LESSOR's** right to file any Tax Claims for any real property taxes or any assessment liens that are imposed for the period after the Expiration Date.

7. **Default; Remedies:**

A. Failure by the **LESSEE** to perform or abide by any material term, provision, covenant, agreement, undertaking or condition of this **LEASE** after the expiration of all applicable grace and notice periods, if any, set forth in this **LEASE**, including **Paragraph 4.A** above, shall constitute a material default (a "Default") of this **LEASE** for which the **LESSOR** may exercise all such rights and remedies as provided at law, in equity or under this **LEASE** (provided, however, that the foregoing materiality standard for the failure to perform or abide by a term, provision, covenant, agreement, undertaking or condition of this **LEASE** shall

not apply to any such matter that is already qualified to a materiality standard). Without limiting the foregoing, notwithstanding the notice and cure rights under **Paragraph 4.A** above, the failure of **LESSEE** to comply with any of the following within the cure period, if any, specified for any such breach or failure, shall constitute an immediate Default by **LESSEE** under this **LEASE**:

(1) Failure of **LESSEE** to pay any installment of Rent hereunder when payment is due. Notwithstanding the foregoing, **LESSEE** shall have one (1) five day grace period following written notice of non-payment from **LESSOR** of one installment of Rent in any twelve (12) month period during the Term of this **LEASE**.

(2) Failure of **LESSEE** to pay any Additional Rent or other monetary obligation within five (5) days following **LESSOR's** written demand therefore.

(3) Failure of **LESSEE** to maintain all insurance coverages required hereunder in full force and effect at all times during the Term of this **LEASE**.

(4) Failure of the **LESSEE** to replenish the Security Deposit in accordance with **Paragraph 33.B.** of this **LEASE**.

B. Upon the occurrence of a Default under this **LEASE**, **LESSOR** shall have the right, with or without notice or demand, to exercise all such rights and remedies granted or available under this **LEASE**, the laws of the State of Florida, federal law and/or common law (including, without limitation, the right to terminate this **LEASE**) without limiting any of the other remedies that **LESSOR** may have under this **LEASE**.

C. Mediation: In the event a dispute arises which the Parties cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.

8. Notices: All notices to the **LESSEE** under this **LEASE** shall be in writing and sent by certified mail return receipt requested, any form of overnight mail delivery or hand delivery to:

If to **LESSEE**: c/o United States Sugar Corporation
111 Ponce de Leon Avenue
Clewiston, Florida 33440
Attention: Malcolm S. (Bubba) Wade, Jr. and
Edward Almeida, Esq.
Fax (863) 902-2120

With a copy to: Gunster, Yoakley & Stewart, P.A.
Attorneys At Law
Las Olas Centre
450 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301-4206
Attention: Daniel M. Mackler, Esq. and

Danielle DeVito Hurley, Esq.
Fax: (954) 523-1722

If to **LESSOR**: South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director and General Counsel
Telefax: (561) 681-6233

With a copy to: Chairman of the Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director
Telefax: (561) 681-6233

With a copy to: Florida Department of Environmental Protection
3900 Commonwealth Boulevard, M.S. 49
Tallahassee, FL 32399
Attention: Secretary
Telefax: 850-245-2021

All notices required by this **LEASE**, provided they are addressed as set forth above, shall be considered delivered: (i) on the date delivered if by hand delivery, (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed by certified mail return receipt requested and (iii) one day after such notice is deposited with any form of overnight mail service for next day delivery. Either Party may change its address by providing prior written notice to the other of any change of address.

9. **Relationship between Parties:** Nothing contained in this **LEASE** shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the Parties hereto other than the relationship of **LESSOR** and **LESSEE**.

10. **Assignment and Subletting:**

A. The **LESSEE** shall not assign, delegate or otherwise transfer all or any part of its rights and obligations as set forth in this **LEASE** collectively ("Assignment") or sublease all or any portion of the Premises ("Sublease") without the prior written consent of the **LESSOR** in each instance, which consent may be withheld by **LESSOR** in **LESSOR's** sole and absolute discretion; provided, however, that notwithstanding the foregoing, **LESSOR's** consent to an Assignment shall not be unreasonably withheld so long as **LESSEE** complies with subparagraph C. below. Any Assignment made by **LESSEE** without the prior written consent of **LESSOR** shall be void and of no force or effect.

B. In the event **LESSOR** does permit an Assignment by **LESSEE**, then the assignee shall automatically be deemed to have assumed all duties, responsibilities and obligations of LESSEE under this LEASE from and after the effective date of the Assignment

(including, without limitation, the funding of the Security Deposit Fund pursuant to **Paragraph 33.B.** below) and the **LESSEE** shall, upon such Assignment, be automatically released of its duties, responsibilities or obligations under this **LEASE** from and after the effective date of the Assignment; provided, however, that **LESSEE** shall not be released with respect any of the representation, warranties, duties, responsibilities, liabilities or obligations under this **LEASE** for matters or conditions arising, occurring or existing prior to the effective date of any Assignment. Any sale or other transfer of at least a fifty percent (50%) majority interest of the voting stock of **LESSEE** if **LESSEE** is a corporation (including by way of merger or consolidation), or any sale or other transfer of at least fifty percent (50%) of the general partnership interest in the event **LESSEE** is a general partnership or limited partnership, shall constitute an Assignment for purposes of this **LEASE**.

C. If **LESSEE** shall desire **LESSOR's** consent to any Assignment, **LESSEE** shall notify **LESSOR**, which notice shall include: (i) the name and address of the proposed assignee; (ii) the proposed effective date (which shall not be less than 45 nor more than 180 days after **LESSEE**'s notice); (iii) reasonable evidence that the proposed assignee has the financial ability to perform its obligations under this **LEASE**; and (iv) reasonable evidence that the proposed assignee is experienced in the operation of the Premises for agricultural operations, and such other information as **LESSOR** may reasonably require. In the event that **LESSOR** does not provide written notice of its approval or disapproval of a proposed Assignment within thirty (30) days after receipt of written request from **LESSEE**, then such Assignment shall be deemed to be approved by **LESSOR**.

D. Notwithstanding anything herein to the contrary, **LESSEE** shall have the right to assign its rights under this **LEASE** to an affiliate or subsidiary of **LESSEE** (i.e., an entity in which at least one of the entities comprising **LESSEE** owns more than a 50% voting interest or otherwise effectively controls the same) or to any Person(s) that acquires all or substantially all of the assets of **LESSEE** related to the [****SUGAR LEASE** - sugar cane] [****CITRUS LEASE** - citrus] business and operations, without **LESSOR's** consent, provided, however, **LESSEE** agrees to give **LESSOR** a copy of the fully executed assignment and assumption of this **LEASE** evidencing such transfer and **LESSEE** shall not be released from its obligations hereunder.

E. Notwithstanding anything to the contrary contained in this **LEASE**, including this **Paragraph 10.**, **LESSEE** shall have the right to enter into licenses or Subleases for other parties to use all or portions of the Premises for agricultural crop production without **LESSOR's** consent to the extent the same are entered into in the ordinary course of **LESSEE**'s business consistent with past practices and such licensee or sublessee agrees to comply with Best Management Practices, all of which shall be subordinate to **LESSOR's** interest in the Premises.

F. Notwithstanding anything to the contrary contained in this **LEASE**, upon the Expiration Date, **LESSEE** shall assign to **LESSOR** all permits obtained by **LESSEE** in connection with the Premises to the extent such permits are assignable. To the extent that any licenses or permits that are required for the operation of the Permitted Uses have been assigned to **LESSOR** prior to or during the Lease Term, then **LESSOR** shall take such actions as are reasonably requested by **LESSEE** in order to maintain such licenses and permits in full force and effect during the Lease Term.

11. **Permits and Approvals:**

A. The **LESSEE** shall obtain all federal, state, local, and other governmental approvals and permits necessary for the occupancy, use, maintenance and operation of the Premises, as well as all necessary private authorizations and permits prior to the Commencement Date and shall maintain same throughout the Lease Term. Within five (5) days of demand by **LESSOR** to **LESSEE**, **LESSEE** shall provide and/or make available to **LESSOR** copies of all permits and authorizations that **LESSEE** is required to obtain pursuant to the provisions of this **LEASE**.

B. The **LESSEE** shall also obtain, and maintain throughout the term of this **LEASE**, any and all applicable **LESSOR (South Florida Water Management District)** permits, including but not limited to **LESSOR** Right of Way Permits and Consumptive Use Permits, as well as permits required by any of the Counties, if applicable. **LESSEE** acknowledges that there is no guarantee that **LESSEE** will receive any permits.

C. The **LESSEE** shall be responsible for compliance with all permit terms and conditions applicable to the Premises, including but not limited to those terms and conditions required by Environmental Resource Permits, Consumptive Use Permits, Surface Water Management Permits, Wetlands Resource Management Permits, Works of the District Permits, and Right of Way Permits issued by **LESSOR** with respect to the Premises. **LESSEE** further acknowledges that **LESSEE**'s responsibility for compliance with all permit terms and conditions applicable to the Premises, shall include, but not be limited to, operating and maintaining the surface water management system and mitigation areas on the Premises in accordance with all permit requirements.

12. **Compliance with Laws, Rules, Regulations and Restrictions:** **LESSEE** shall comply with, and be the responsible entity for remedying all violations of, all applicable federal, state, local and **LESSOR** laws, ordinances, rules and regulations, permits, and private restrictions, applicable to the Premises and **LESSEE**'s operations conducted thereon and occupancy thereof, as well as **LESSEE**'s performance of this **LEASE**. **LESSOR** undertakes no duty to ensure such compliance. All rules and regulations under Chapter 373, Florida Statutes pertaining to the Premises remain in full force and effect.

13. **Indemnification:** For good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the **LESSEE** shall defend, indemnify, save, and hold the **LESSOR** harmless from and against any and all claims, suits, judgments, loss, damage and liability incurred by **LESSOR**, including but not limited to reasonable attorney's fees and costs incurred by **LESSOR**, ("Loss") which arise(s) directly, indirectly or proximately as a result of **LESSEE**'s or its officers', employees', contractors' or agents' use or occupation of the Premises, its operations conducted on the Premises, or from the performance or non-performance of any term, condition, covenant, obligation or provision of this **LEASE** by **LESSEE**, even if such Loss is caused by negligence on the part of **LESSOR**, but not **LESSOR's** or its officers' or employees' gross negligence or willful misconduct. **LESSEE** acknowledges that it is solely responsible for compliance with the terms of this **LEASE**. **LESSOR** shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein and to the extent that **LESSEE** is providing such defense, **LESSEE** shall have the

right, to the fullest extent permitted by law, to assert any defenses that are available to **LESSOR** in such matter.

14. **LESSEE's Property at Risk:** All of **LESSEE**'s personal property, equipment and fixtures located upon the Premises shall be at the sole risk of **LESSEE** and **LESSOR** shall not be liable under any circumstances for any damage thereto or theft thereof. In addition, **LESSOR** shall not be liable or responsible for any damage or loss to property or injury or death to persons occurring on or adjacent to the Premises resulting from any cause, including but not limited to, defect in or lack of repairs to the improvements located on the Premises, unless the same is caused by **LESSOR's** gross negligence or willful misconduct.

15. **Attorney's Fees:** In any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the other Party.

16. **Insurance:**

A. **Types of Insurance**. To the extent applicable and unless otherwise agreed to in writing by the **LESSOR**, including, without limitation, to the extent provided in **Schedule "4"**, **LESSEE** shall procure and maintain throughout the Lease Term at **LESSEE**'s sole cost and expense the following types of insurance with deductibles acceptable to **LESSOR** but in no event greater than $100,000 (unless otherwise agreed to herein and other than with respect to windstorm, which deductible shall not exceed 5% of the total insurable value):

(1) **Worker's Compensation Insurance**. If applicable, **LESSEE** shall provide workers' compensation subject to statutory limits and employers liability in the amount of ONE MILLION AND 00/100 DOLLARS ($1,000,000).

(2) **Liability Insurance.** (A) Comprehensive General Liability Insurance relating to the Premises and its improvements and appurtenances, which shall include, but not be limited to, Premises and Operations, Independent Contractors, Products and Completed Operations and Contractual Liability. Coverage shall be no more restrictive than the latest edition of the Commercial General Liability policies of the Insurance Services Office (ISO). This policy shall provide coverage for death, bodily injury, personal injury, and property damage that could arise directly, indirectly or proximately from the performance of this **LEASE**. The minimum limits of coverage shall be $1,000,000 per occurrence and $2,000,000 in the annual aggregate for Bodily Injury Liability and Property Damage Liability and (B) Umbrella liability insurance containing minimum limits of Fifty Million and No/100 Dollars ($50,000,000.00) for the Premises and shall follow form to the underlying General Liability. The limits of liability insurance shall in no way limit or diminish **LESSEE**'s liability under **Paragraph 13** hereof.

(3) Business Automobile Liability Insurance. Business Automobile Liability Insurance protecting **LESSEE** which shall have minimum limits of $5,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall be an "any-auto" type of policy including owned, hired, non-owned and employee non-ownership coverage.

(4) Casualty Insurance. Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies covering fire, lightning, vandalism, and malicious mischief, and including loss caused by any type of windstorm or hail (including Named Storms) on all Improvements and Personalty. To the extent commercially available, coverage must also include Certified Acts of Terrorism per the current Terrorism Risk Insurance Reauthorization Act of 2007 or any subsequent act, reauthorization or extension thereof. Said Property coverage on the Improvements shall (A) be in an amount equal to one hundred percent (100%) of the full replacement cost with a waiver of depreciation; and (B) contain an agreed amount endorsement with respect to the Property waiving all co-insurance provisions or to be written on a no co-insurance form.

(5) **Environmental Impairment Insurance.** Environmental Impairment Insurance with limits and in form and substance acceptable to **LESSOR**, in its sole and absolute discretion, with a maximum deductible of $250,000 and a policy term extending through the Expiration Date of this LEASE. Said policy must provide coverage for on-site clean-up and third-party claims for unknown pre-existing conditions & new conditions. Coverage must also include business interruption on an actual loss sustained basis and coverage for natural resource damage. Coverage must include above ground storage tanks and any other equipment with a risk of causing environmental impairment.. Acquisition of this insurance shall in no way limit or diminish **LESSEE**'s liability under **Paragraph 19** hereof.

B. **Proof of Insurance.** **LESSEE** shall provide **LESSOR** with current insurance certificates or proof of self-insurance (for Worker's Compensation Insurance) evidencing all insurance required pursuant to this **LEASE** as proof of insurance prior to the Commencement Date and each year, upon renewal, thereafter. Upon request, **LESSEE** shall provide **LESSOR** with complete copies of the policies. All insurance required under this **LEASE** shall be written on a financially sound company acceptable to **LESSOR** with a rating of "A VIII" or better with AM Best or "A" or better with S&P and shall name **LESSOR** as loss payee and as additional insured as their interests may appear as applicable and shall contain a waiver of subrogation in favor of **LESSOR**.

C. **Notice of Insurance Cancellation.** **LESSEE** shall notify **LESSOR** at least fifteen (15) days prior to cancellation or modification of any insurance required by this **LEASE**. Insurance required under **Paragraphs 16.A. (1) (2), (3), (4), and (5)** above of this **LEASE** shall contain a provision that it may not be cancelled or modified until thirty (30) days after written notice to **LESSOR**. In the event **LESSEE** fails to obtain and keep any insurance required hereunder in full force and effect, **LESSOR** may at its option obtain such policies and **LESSEE** shall pay to **LESSOR** the premiums therefore, together with interest at the maximum rate allowed by law, upon demand as "Additional Rent". Without limiting the foregoing, **LESSEE**'s failure to obtain, pay for and keep any insurance required hereunder in full force and effect and unmodified (unless **LESSEE** has obtained **LESSOR's** prior written consent for any such modification) shall constitute an Event of Default under this **LEASE**.

D. **Subcontractor Insurance.** It shall be the responsibility of **LESSEE** to ensure that all subcontractors are adequately insured or covered under its policies.

E. **Business Interruption Insurance & Crop Insurance for Loss of Revenue/Yield.** To the extent applicable and unless otherwise agreed to in writing by the **LESSOR** (A) Business Interruption insurance (1) covering all risks required to be covered by the insurance provided for in subparagraph (iv) above and (2) on an actual loss sustained basis for the period of restoration in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Premises for a period of at least eighteen (18) months after the date of casualty and (3) containing an additional extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or twelve 12 months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. In no event shall the period of indemnification, including the extended period of indemnity, be less than thirty (30) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on **LESSEE**'s reasonable estimate of the gross revenues from the Property for the succeeding twenty-four (24) month period; and (B) Crop Insurance providing revenue protection or coverage against yield losses Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall **LESSOR** have any claim to any business interruption insurance that **LESSEE** may procure (or proceeds thereof).

F. **Casualty.** Notwithstanding anything to the contrary in this **LEASE**, in the event of a casualty, **LESSEE** shall be obligated to restore the Premises.

(1) Notwithstanding the foregoing, in the event of a loss or damage to all or any portion of the Premises due to fire or other casualty that causes seventy-five percent (75%) or more of the Premises to be destroyed or damaged during the Lease Term, then **LESSEE** shall have the option to restore such loss or damage, by electing to do so in a written notice to **LESSOR** within thirty (30) days after such loss or damage.

(2) In the event that **LESSEE** elects to restore such loss or damage pursuant to **subparagraph 16.F.(1)** above, then **LESSEE** and **LESSOR** shall endorse any checks received so that the insurance proceeds can be paid into a bank account controlled by a mutually and reasonably acceptable third party escrow agent that will disburse the insurance proceeds to **LESSEE** from time to time as restoration progresses in order for **LESSEE** to timely pay all invoices related to same in accordance with the terms of a mutually and reasonably agreed upon escrow agreement, with any excess or surplus following completion of restoration to be paid to **LESSEE**. To the extent of any loss or damage to the Premises less than or equal to $500,000, **LESSOR**'s consent shall not be required for the type, plans or manner of such restoration; provided, however, that prior to commencement of the restoration **LESSEE** shall provide **LESSOR** with a description of the restoration process, an evaluation of the proposed restoration that demonstrates that the same production capacity (if applicable) that was actually achieved prior to such loss or damage will be met after the restoration is complete. No later than forty-five (45) days after completion of the restoration, **LESSEE** shall notify **LESSOR** in writing of such completion and shall provide a certificate from the licensed engineer and/or architect that was engaged by **LESSEE** in connection with the restoration or, if none, a licensed engineer and/or architect that is reasonably acceptable to both parties, which certification (i) identifies the loss or damage to the Premises, (ii) identifies the nature and the amount of costs

incurred by **LESSEE** in restoring the loss or damage, (iii) states that the restoration costs incurred were reasonable to perform the restoration in accordance with all applicable laws, and (iv) if applicable, states that the restoration work is substantially complete and that the restored facility is at least comparable in production capacity to that which was actually achieved immediately prior to the casualty loss or damage.

(3) In the event that **LESSEE** does not restore such loss or damage as provided above, then insurance proceeds for the property damage shall be paid by **LESSEE**'s insurer to **LESSOR** with all other recoveries being paid to **LESSEE**.

(4) Notwithstanding anything contained in this **LEASE** to the contrary, to the extent of any loss or damage to the Premises less than or equal to $500,000, **LESSEE** shall have the exclusive right to settle and adjust any claim with its insurance company, at its sole cost and expense, regarding the amount to be paid for any loss or damage under insurance as to which **LESSOR** is named as an additional insured and/or loss payee without **LESSOR's** participation or consent (except that **LESSOR** shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon **LESSEE**'s request); otherwise, to the extent of any loss or damage to the Premises greater than $500,000, **LESSOR** shall have the right (i) to participate with **LESSEE** in the adjustment, collection and compromise of any and all claims under all Property insurance policies and (ii) during any Event of Default, to execute and deliver on behalf of **LESSEE** all necessary proofs of loss, receipts, vouchers and releases required by the insurers. If **LESSEE** does not restore any loss or damage to the Premises as provided in **subparagraph 16.F.(1)** above, then **LESSOR** shall have the exclusive right to settle and adjust any claims with the insurance company, at its sole cost and expense, for insurance proceeds for property damage under insurance as to which **LESSOR** is named as an additional insured and/or loss payee without **LESSEE**'s participation or consent (except that LESSEE shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon **LESSOR's** request). Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall **LESSOR** have any claims or rights with respect to any business interruption or business income insurance proceeds which are payable under any insurance maintained by **LESSEE**.

(5) In the event of a loss or damage to all or any portion of the Premises due to fire or other casualty during the Lease Term, no abatement of rent will occur.

17. Notice to **LESSOR** Concerning Specific Acts: The **LESSEE** agrees to immediately report any incidence of the following to the **LESSOR**:

A. Fire (other than controlled burning permitted pursuant to the terms of this **LEASE**)

B. Death or injury resulting in potential death or permanent disability.

C. Poaching and trespassing

D. Any hazard, condition or situation that is reasonably likely to (i) become a material liability to the **LESSOR**, or (ii) materially damage the Premises or improvements on the Premises of the **LESSOR**.

E. Any activity observed by **LESSEE** on the Premises that **LESSEE** should reasonably know is a violation of rules and regulations promulgated by the **LESSOR**, the Florida Fish and Wildlife Conservation Commission or any other State or local agency.

F. Any written notice of any violation of applicable Federal, State or local laws received by **LESSEE** from the applicable governmental authority.

G. Disposition of pollutants or contaminants per **Paragraph 18** hereof.

18. **Hazardous Materials and Pollutants:**

A. For purposes of this **LEASE**:

(1) "Pollutant" shall mean any hazardous or toxic substance, chemical, material, or waste of any kind, petroleum, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws.

(2) "Disposal" shall mean Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Paragraph 18.A(2)**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Paragraph 18.A(1)** of this **LEASE**) and the release, storage, use, handling, discharge or disposal of Pollutants.

(3) "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

B. During the Lease Term, **LESSOR** shall have the right to cause the Premises to be monitored in accordance with the Best Management Practices to be developed by mutual agreement by **LESSOR** and **LESSEE**.

C. Prior to the Commencement Date, **LESSOR** has performed Buyer's Environmental Assessment pursuant to the Agreement for Sale and Purchase and performed sampling in those areas of the Premises where **LESSOR** identified concerns regarding the likely presence of Pollutants. Pursuant to the Agreement for Sale and Purchase, **LESSOR** has agreed to perform certain responsibilities for the Remediation of the Pollutants identified in the Buyer's Environmental Assessment. **LESSEE** and **LESSOR** have no responsibility or liability under the terms of this **LEASE** for the Remediation of the Disposal of Pollutants Identified in Buyer's Environmental Assessment and such Disposal of Pollutants that occurred prior to the Commencement Date.

D. **LESSEE** shall not cause or permit the Disposal of any Pollutants upon the Premises, or upon adjacent lands, during the Lease Term, which violates Environmental Laws. Any Disposal of a Pollutant, whether caused by **LESSEE** or any other third party, in violation of Environmental Laws shall be reported to **LESSOR** immediately upon the knowledge thereof by **LESSEE**.

E. Within ninety (90) days, or such longer time as is reasonably necessary, of delivery of notice from **LESSOR** to **LESSEE**, and except as otherwise provided in **subparagraph C.** above, **LESSEE** shall be solely responsible, at **LESSEE**'s sole cost and

expense, for commencing and thereafter performing, or causing to be performed, any and all assessments, cleanup and monitoring (collectively, "Remediation") of all Pollutants disposed of or otherwise discovered on the Premises or emanating from the Premises to adjacent lands, in violation of Environmental Laws, as a result of use or occupation of the Premises or surrounding lands by **LESSEE**, its agents, licensees, invitees, subcontractors or employees during the Lease Term (provided, however, that the foregoing shall not in any way limit any liability, obligations or rights of **LESSEE** or **LESSOR**, to the extent independently arising under the Agreement for Sale and Purchase, as modified and amended). In the event Remediation is necessary as required in the previous sentence, then **LESSEE** shall furnish to **LESSOR** within a reasonable period of time written proof from the appropriate local, state and/or federal agency with jurisdiction over the Remediation that the Remediation has been satisfactorily completed in full compliance with all Environmental Laws.

F. **LESSEE** understands and acknowledges **LESSOR**'s intended use of the Premises as an everglades restoration project (hereinafter referred to as "**LESSOR's Intended Use**") and that it is imperative that **LESSEE**'s use of chemicals be monitored in accordance with the Best Management Practices to prevent the release of chemicals in concentrations that may have adverse impacts which jeopardize **LESSOR**'s Intended Use, including, but not limited to, adverse impacts to human health or fish and wildlife. Material non-compliance with the Best Management Practices by **LESSEE** its agents, licensees, invitees, subcontractors or employees during the Lease Term, after expiration of applicable grace and notice periods, shall constitute a Default under this **LEASE**.

G. For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, **LESSEE** shall indemnify; defend and hold harmless **LESSOR**, from and against any and all claims, suits, judgments, loss, damage, and liability which may be incurred by **LESSOR**, including but not limited to **LESSOR's** reasonable attorney's fees and costs, which arises directly, indirectly or proximately as a result of the Disposal of any Pollutants which violate Environmental Laws and are caused by **LESSEE**, its agents, licensees, invitees, subcontractors or employees with respect to the Premises during the Lease Term. This responsibility shall continue to be in effect for any Disposal of Pollutants in violation of Environmental Laws for which **LESSOR** provides written notice to **LESSEE** on or before the third anniversary of the Expiration Date.

H. While this Paragraph 18 establishes contractual liability for **LESSEE** regarding Disposal of Pollutants on the Premises as provided herein, it does not alter or diminish any statutory or common law liability of **LESSEE** for such Disposal of Pollutants, except to the extent provided in **subparagraph C** above.

I. The provisions of this **Paragraph 18** shall survive for three years after the Expiration Date.

19. **Discrimination:** The **LESSEE** shall ensure that no person shall, on the grounds of race, color, creed, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity under this **LEASE**. The **LESSEE** shall take all measures necessary to effectuate these assurances.

20. **Publicity:** Prior to engaging in any discussions with the news media pertaining to this **LEASE**, the **LESSEE** shall notify the **LESSOR's** Office of Communications and obtain **LESSOR's** prior written consent, which may be given electronically. This includes news releases, media requests for interviews, feature articles, fact sheets, or similar promotional materials.

21. **Affidavit Regarding Ability to Enter into LEASE with State Agency:** The **LESSEE**, by its execution of this **LEASE**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **LESSOR** is a convicted vendor or, if the **LESSEE** or any affiliate of the **LESSEE** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **LESSEE** further understands and accepts that this **LEASE** shall be either voidable by the **LESSOR**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, F.S. The **LESSOR**, in the event of such termination, shall not incur any liability to the **LESSEE** for any work or materials furnished.

22. **Vacation of Premises:** Upon the expiration or termination of this **LEASE** as to any portion of the Premises, the **LESSEE** shall promptly vacate and surrender the Premises or applicable portion of the Premises to **LESSOR**. The **LESSEE** shall remove all personal property of the **LESSEE** and shall restore such vacated portion of the Premises to its original condition existing as of the Commencement Date of this **LEASE**, subject to reasonable wear and tear, casualty not subject to restoration pursuant to **Paragraph 16.F** and property taken by condemnation pursuant to **Paragraph 36**, within a period not to exceed five (5) calendar days from the Expiration Date. Notwithstanding anything in this **LEASE** to the contrary, **LESSEE**, at its sole cost and expense, shall clean up and remove all abandoned personal property (including but not limited to mobile home trailers), refuse, garbage, junk, rubbish, solid waste, trash and debris from the portion of the Premises so vacated and shall deliver the portion of the Premises so vacated with cane stubble thereon to the extent the same exists from the then last harvest and, except as provided in **Paragraph 2.K** above, **LESSEE** is not obligated to replant any harvested crops or to disk any portion of the Premises after any harvest by **LESSEE**.

23. **Holding Over:** Any holding over without **LESSOR** consent shall constitute a Default by **LESSEE** and entitle **LESSOR** to reenter the Premises and collect monthly rent equal to 150% of the Rent at such time, together with the Additional Rent.

24. **Insolvency or Bankruptcy:** The appointment of a receiver to take possession of all or substantially all of the assets of **LESSEE**, or an assignment of **LESSEE** for the benefit of creditors, or any action taken or suffered by **LESSEE** under any insolvency, bankruptcy, reorganization or other debtor relief proceedings, whether now existing or hereafter amended or enacted, shall at **LESSOR's** option constitute a breach of this **LEASE** by **LESSEE**. Upon the happening of any such event or at any time thereafter, this **LEASE** shall terminate five (5) days after written notice of termination from **LESSOR** to **LESSEE**. In no event shall this **LEASE** be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this **LEASE** or any rights or privileges hereunder be an asset of **LESSEE** under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

25. **Sale by LESSOR:** Notwithstanding anything contained in this **LEASE** to the contrary, in the event of a sale or conveyance by **LESSOR** of the Premises or any portion thereof or in the event of an assignment of this **LEASE** by **LESSOR**, any such assignment, sale or conveyance shall automatically operate to release **LESSOR** from any future liability upon any of the terms, provisions, covenants or conditions, express or implied, herein contained in favor of **LESSEE**, provided that the purchaser of the Premises or assignee of this **LEASE** executes a non-disturbance agreement in favor of **LESSEE** and agrees to be bound by the terms of this **LEASE** and in such event **LESSEE** agrees to look solely to the successor in interest of **LESSOR** in and to this **LEASE**. This **LEASE** shall not be affected by any such sale, and **LESSEE** agrees to attorn to the purchaser or assignee.

26. **Estoppel Confirmation:** **LESSEE** and **LESSOR** shall, within seven (7) days after written request of the other Party, execute an estoppel letter regarding the status of this **LEASE** which may be relied upon by any lender, mortgagee or purchaser of the Premises or the Crops and any assignee of either Party's interest in this **LEASE**. Such estoppel letter shall confirm the terms, conditions and provisions of this **LEASE**; that this **LEASE** is in full force and effect; that this **LEASE** is unmodified, or if modified, the provisions of any modifications; that neither **LESSOR** nor **LESSEE** is in default of any of the terms, conditions or provisions of this **LEASE**; that **LESSEE** has no offsets, counterclaims or defenses to the payment of any Rent or Additional Rent; that **LESSEE** has no options to renew or purchase, and any other statements which **LESSOR** or **LESSEE** reasonably requests. In the event **LESSEE** or **LESSOR** fails to comply with any of the foregoing, such failure to comply shall automatically be deemed a confirmation by such Party that all items contained in the estoppel letter requested by the other Party are true and correct and any lender, mortgagee or purchaser of the Premises or the Crops, and any assignee of **LESSOR's** interest in this **LEASE** may rely on such confirmation.

27. **Capital Improvements and Alterations:**

A. **LESSEE** shall not make any alterations, additions or improvements, whether capital, internal or external, (collectively, "Alterations") in, on or to the Premises or any part thereof without the prior written consent of **LESSOR**, which consent may be withheld in **LESSOR's** sole and absolute discretion.

B. Any Alterations to the Premises, except for **LESSEE**'s movable furniture and equipment, shall immediately become **LESSOR's** property and, at the end of the Lease Term, shall remain on the Premises without compensation to **LESSEE**; provided, however, that any such movable furniture and equipment, otherwise belonging to **LESSEE**, but remaining on the Premises at the expiration or other termination of this **LEASE** shall also become the property of **LESSOR**.

C. In the event **LESSOR** consents to the making of any Alterations by **LESSEE**, the same shall be made by **LESSEE**, at **LESSEE**'s sole cost and expense, in accordance with the plans and specifications previously approved in writing by **LESSOR**. **LESSEE** shall comply with all applicable laws, including but not limited to Construction Lien Law of the State of Florida, ordinances, regulations, building codes, and obtain all required permits, inspections, and certificates as may be required by all governmental agencies having jurisdiction thereof.

28. **Liens:**

A. **LESSEE** shall keep the Premises free from any liens, including, but not limited to mechanic's liens, arising out of any work performed, materials furnished or obligations incurred by **LESSEE**.

B. The **LESSEE** herein shall not have any authority to incur liens for labor or material on the **LESSOR's** interest in the Premises and all persons contracting with the **LESSEE** for the destruction or removal of any building or for the erection, installation alteration, or repair of any building or other improvements on the Premises and all materialmen, contractors, mechanics and laborers, are hereby charged with notice that they must look to the **LESSEE** and to the **LESSEE's** interest only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this **LEASE**.

C. In the event that **LESSEE** shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a property bond, **LESSOR** shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by **LESSOR**, including, but not limited to reasonable attorney's fees and expenses incurred by it in connection therewith, together with interest at the maximum rate allowed by law, shall be considered Additional Rent and shall be payable to **LESSOR** by **LESSEE** on demand.

D. **LESSOR** shall have the right at all times to record in the public records or post and keep posted on the Premises any notice permitted or required by law, or which **LESSOR** shall deem proper, for the protection of **LESSOR**, the Premises, the improvements located thereon and any other Party having an interest therein, from mechanic's and materialmen's liens, and **LESSEE** shall give to **LESSOR** at least thirty (30) days prior notice of commencement of any construction on the Premises.

E. Pursuant to Sections 713.01(21) and 713.10, the interest of **LESSOR** in the Premises and the improvements located thereon shall not be subject to liens for improvements made by **LESSEE** and such liability is expressly prohibited.

F. Notwithstanding anything to the contrary contained in this **LEASE**, **LESSEE** may from time to time, in its ordinary course of business, grant to certain lenders selected by **LESSEE** and its affiliates (the "Lenders") a lien on and security interest in all assets and personal property located on the Premises and owned by **LESSEE**, including, but not limited to, all crops (e.g., citrus and sugar cane), crop products, inventory, goods, machinery and equipment owned by **LESSEE** (but expressly excluding **LESSEE's** right, title and interest in, to or under this **LEASE**) ("**LESSEE's Property**") as collateral security for the repayment of any indebtedness to the Lenders and all amendments, modifications and renewals thereof (the "Indebtedness"). The Lenders may, in connection with any foreclosure or other similar action relating to the **LESSEE's** Property, enter upon the Premises (or permit their representatives to do so on their behalf) in order to implement an action for default, foreclosure and/or any other remedy that Lenders may have against **LESSEE** and/or **LESSEE's** Property under the terms and conditions of the Indebtedness without liability to **LESSOR**, to the extent any of **LESSEE's**

Property is located on the Premises. The Lender's rights with respect to access to the Premises and the crops thereon shall be strictly limited to the then current harvest season, subject to Lenders exercise of due care in connection with such access. **LESSOR** hereby agrees that any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent and **LESSOR's** statutory lien rights that **LESSOR** may have in or on **LESSEE's** Property, whether arising by agreement or by law, are hereby subordinate to the liens and/or security interests in favor of the Lenders which secure the Indebtedness, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant or permit a lien upon or security interest in any of **LESSOR's** assets or **LESSEE's** right, title or interest in, to or under this **LEASE**. **LESSOR** agrees to accept timely performance on the part of any of the Lenders or their agents or representatives as though performed by **LESSEE** to cure any default or condition for termination (although the Lenders shall have no obligation to do so) to the extent such cure is completed within the applicable cure period **LESSEE** has to cure any such default under this **LEASE**. Subject to compliance with the terms and conditions of this **Paragraph 28.F.**, the foregoing subordination shall be automatic and self-effective without the necessity to execute any further documentation evidencing the same; however, without limiting the effectiveness of such subordination, **LESSOR** agrees to promptly execute any additional documents reasonably required by the Lenders to evidence **LESSOR's** subordination of its lien rights described herein. Notwithstanding anything in this **LEASE** to the contrary, **LESSEE** hereby agrees that any Loss incurred by **LESSOR** due to bodily injury or property damage in connection with: (i) the Indebtedness; (ii) actions by any of the Lenders; (iii) any subordination by **LESSOR** set forth herein; or (iv) any other matters contained in this **Paragraph 28.F.**, all shall fall under the indemnification provisions in favor of **LESSOR** set forth in **Paragraph 13.** above.

29. Repair: **LESSEE** covenants and agrees that **LESSEE** shall maintain the Premises (which excludes the crops) in its original condition existing as of the Commencement Date of this **LEASE**, subject to reasonable wear and tear, casualty pursuant to **Paragraph 16.F** and condemnation pursuant to **Paragraph 36**. **LESSEE** shall, at **LESSEE's** expense, maintain and preserve the Premises in the state of condition and repair as required in the immediately preceding sentence and make all necessary repairs to the Premises and all improvements, fixtures and equipment located thereon, if any, including but not limited to repairs to all interior, exterior, roof and structural portions of the Premises, all culverts, all pumps and pumping stations, all paved surfaces, windows, landscaping and all electrical, plumbing, HVAC and other machinery located on the Premises consistent with repair standard set forth in this paragraph. Subject to the other provisions of this **LEASE** that may provide to the contrary, including **Paragraph 16.F, Paragraph 35** and **Paragraph 36**. **LESSEE** shall be responsible for all such repairs and maintenance whether caused by acts of **LESSEE**, its agents, servants, employees, customers, guests, licensees or by acts of third parties, governmental regulations, acts of God, casualties, or any other reason.

30. Existing Interests in Premises: Pursuant to Section 373.099, Florida Statutes, **LESSOR** does not warrant or represent that it has title to the Premises. **LESSEE's** occupancy of the Premises shall be subject to the rights of others existing as of the day immediately preceding the Commencement Date of this **LEASE** which are set forth in easements, restrictions, reservations, all matters of public record and all other encumbrances affecting the Premises as of the day immediately preceding the Commencement Date of this **LEASE**.

31. **LESSOR Inspection, Ingress and Egress:**

A. The right of entry is hereby reserved by the **LESSOR**, for itself and its officers, agents, employees, contractors, subcontractors, and assigns, to enter upon and travel through and across the Premises for the purposes of: inspections, maintenance, and for any lawful purpose including, but not limited to, inspecting the Premises to ensure the **LESSEE**'s performance of its obligations under this **LEASE**; sampling and monitoring the **LESSEE**'s use of chemicals and pesticides on the Premises; performing environmental remediation or performing any work or repairs, which the **LESSOR** may determine is necessary by reason of the **LESSEE**'s default under the terms of this **LEASE**; exhibiting the Premises for lease, sale or mortgage financing; conducting inspections, investigations, soil borings, surface and groundwater sampling, monitoring, and any other testing, sampling, or other investigation necessary to support the engineering design and/or any other analyses associated with the future use of the Premises. The **LESSEE** shall have no claim for damages of any character on account thereof against the **LESSOR** or any officer, agent, or assign thereof to the extent provided in this **LEASE**.

B. **LESSOR** agrees that from the Commencement Date through the Expiration Date, all officers, employees, contractors and agents of **LESSOR** shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863) 902-2120 the right to enter upon the Premises for the purposes set forth in **subparagraph A** above; provided however that: (a) any contractors or agents of **LESSOR** shall first provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name **LESSEE** as an additional insured thereunder; and (b) all such inspections, investigations and examinations by **LESSOR** or **LESSOR's** officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of **LESSEE** or its business or its tenants and occupants; and (iii) at all times to comply with all of **LESSEE**'s or its tenants' safety standards and requirements.

C. **LESSOR** agrees to be responsible for: (x) any property damage that arises out of or is caused by **LESSOR** or its officers, employees, contractors and agents while such persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, **LESSEE**'s exclusive remedy shall be limited to compensation from **LESSOR** in the amount of $2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre, (y) to the extent found legally responsible, any property damage that arises out of or is caused by **LESSOR's** gross negligence or willful misconduct, or its officers, employees, contractors and agents, while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from **LESSOR's** or its officers', employees', contractors' and agents' inspections of or access to the Premises (but the foregoing shall only be applicable to **LESSOR** only as to its gross negligence or willful misconduct). **LESSOR** shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that **LESSOR** has the legal authority to

agree to be responsible for the acts of its officers, employees, contractors and agents". **LESSEE** acknowledges that **LESSOR** has not made any representation or warranty to **LESSOR** as to, nor has **LESSOR** waived any right to claim that it does not have, legal authority to agree to the provisions of this **Paragraph 31**. The provisions of this **Paragraph 31** shall survive the Expiration Date or any termination of this Agreement for a period of one (1) year.

32. **Miscellaneous Provisions:**

A. **Invalidity of LEASE Provision:** Should any term or provision of this LEASE be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **LEASE**, to the extent that the **LEASE** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

B. **Inconsistencies:** In the event any provisions of this **LEASE** shall conflict, or appear to conflict, the **LEASE**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

C. **Governing Law and Venue:** The laws of the State of Florida shall govern all aspects of this **LEASE**. In the event it is necessary for either Party to initiate legal action regarding this **LEASE**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

D. **Amendment:** This **LEASE** may be amended only with the prior written approval of **LESSOR** and **LESSEE**.

E. **Waiver:** Failures or waivers to enforce any covenant, condition, or provision of this **LEASE** by the Parties, their successors and assigns shall not operate as a discharge of or invalidate such covenant, condition, or provision, or impair the enforcement rights of the Parties, their successors and assigns nor shall it be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right but the same shall remain in full force and effect. Furthermore, the acceptance of Rent, any Additional Rent or a partial payment of same by **LESSOR** shall not constitute a waiver of any preceding breach by **LESSEE** of any provision of this **LEASE** nor a waiver of the right to receive full payment of Rent or Additional Rent.

F. **Final Agreement:** This **LEASE** states the entire understanding between the Parties with respect to the use and occupancy of the Premises after the Commencement Date and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The **LESSEE** recognizes that any representations, statements or negotiations made by **LESSOR'S** staff do not suffice to legally bind the **LESSOR** in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized representative of **LESSOR**. This **LEASE** shall bind the Parties, their assigns, and successors in interest.

G. **Time of the Essence:** Time is of the essence with respect to every term, condition and provision of this **LEASE**.

H. **Survival:** The provisions of **Paragraphs 13, 18, 22 and 23** shall survive the expiration or termination of this **LEASE**. In addition, any covenants, provisions or conditions set forth in this **LEASE** which by their terms bind **LESSEE**, **LESSOR** or both **LESSOR** and **LESSEE** after the expiration or termination of this **LEASE**, shall survive the expiration or termination of this **LEASE** for a period of two (2) years, except for the provisions of **Paragraph 18**, which shall survive as and to the extent provided therein.

I. Prohibition Against Recording: **LESSEE** shall not record this **LEASE** or any portion or any reference thereto without the prior written consent of **LESSOR**, which consent may be withheld by **LESSOR** in **LESSOR's** sole and absolute discretion. In the event **LESSEE** violates any of the foregoing, this **LEASE** shall terminate at **LESSOR's** option or **LESSOR** may declare a Default hereunder and pursue any and all of its remedies provided in this **LEASE**.

J. **WAIVER OF JURY TRIAL. AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS LEASE BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS SUBPARAGRAPH J.**

33. **Special Clauses:**

A. **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

B. **Security Deposit:**

(1) On the Commencement Date and until the **LESSEE** has assigned all of its interest under this **LEASE** pursuant to an Assignment permitted hereunder, the Security Deposit Fund and the Escrow Agreement (as defined below) shall refer to, respectively, the "General Escrow Fund" and the "General Escrow Agreement" (as such terms are defined in the Agreement for Sale and Purchase). Upon an Assignment permitted hereunder, **LESSEE** shall fund an escrow as a security deposit in the amount of Four Million and No/100 Dollars ($4,000,000.00) to secure the performance of all of **LESSEE**'s obligations under this **LEASE**

(the "Security Deposit Fund") which, at **LESSEE**'s option, shall be in the form of cash (a "Cash Escrow") held by an escrow agent mutually acceptable to **LESSEE** and **LESSOR** ("Escrow Agent") pursuant to an escrow agreement in form attached hereto as **Schedule "5"** ("Escrow Agreement"), or a Letter of Credit (as defined in **subparagraph 33.B.(2).** below). Upon the funding of such Security Deposit Fund by the assignee, **LESSOR** shall have no further rights or claims upon or with respect to the General Escrow Fund or General Escrow Agreement for matters related to the **LEASE**.

(2) Letter of Credit. In the event **LESSEE** elects to post a letter of credit pursuant to **subparagraph 33.B.(1).** above for the Security Deposit Fund ("Letter of Credit"), it shall: (a) be in the form of an irrevocable commercial letter of credit in form attached hereto as **Schedule "6"** with a term of at least twelve (12) months, (b) be issued by **LESSEE's** lender under **LESSEE's** revolving credit facility (subject to **LESSOR's** approval of such lender at the time of Closing), naming Escrow Agent as beneficiary, pursuant to the Escrow Agreement; (c) provide for Draws (as defined and set forth below) by Escrow Agent; and (d) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing Letter of Credit that the bank elects that it not be renewed. In the event the Letter of Credit is not timely renewed and **LESSEE** has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent may draw upon the same and hold the proceeds pursuant to the terms of the Escrow Agreement. Each Letter of Credit shall be assignable or transferable to any **LESSOR** Credit Provider (in connection with any collateral assignment thereof) or any transferees, successors or assigns of **LESSOR** that becomes landlord under this **LEASE**. For the purposes of this **LEASE**, the term "Credit Provider" shall be deemed to mean **LESSOR's** lender/financing trustee/credit enhancer/underwriter.

(3) Draws Upon Cash Escrow and Letter of Credit. The Escrow Agreement shall provide that the Escrow Agent may only draw upon a Letter of Credit or Cash Escrow in favor of **LESSOR** (a "Draw") in the event: (a) an agreement has been executed by **LESSEE** and **LESSOR** agreeing upon the reason for, and amount of, the Draw; or (b) **LESSOR** delivers written notice to Escrow Agent of any monetary Default by **LESSEE** under the **LEASE**; or (c) all appeal periods have expired following a final order by a court of law rendering a monetary judgment against **LESSEE** in favor of **LESSOR**. Upon each such Draw request, Escrow Agent shall promptly release the Draw to **LESSOR**.

(4) Replenishing of Cash Escrow or Letter of Credit during the Term. **LESSEE** shall be required to replenish the Security Deposit Fund during the Lease Term in the event any Draws are made against the Security Deposit Fund in accordance with this **Paragraph 33.B.** within fifteen (15) days of such depletion. Any failure by **LESSEE** to replenish the Security Deposit Fund within fifteen (15) days of such depletion shall constitute a Default under this **LEASE**.

(5) Release of Cash Escrow and Letter of Credit Following Expiration Date. The Escrow Agreement for the Security Deposit Fund shall provide that Escrow Agent shall continue to hold the Security Deposit Fund until three (3) years after the later of (i) the final Expiration Date of this **LEASE** or (ii) the final expiration date of any other lease to which the Escrow Agreement is applicable (the "Scheduled Release Date"), provided that any claims must

be made within the applicable survival period as provided under this **LEASE**, provided, however, that if there are any pending claims relating to any portion of such deposit on such Scheduled Release Date, then Escrow Agent shall continue to hold a portion of such deposit in accordance with the Escrow Agreement in the reasonably estimated amount necessary to satisfy such claim(s) until such claim(s) is resolved, and shall release the remaining amount of such deposit to **LESSEE**.

C. **Site Investigation: LESSEE** is responsible for examining the Premises and satisfying itself as to the general and local conditions, particularly water level conditions that are likely to impact **LESSEE**'s operation and those conditions bearing upon the availability of water, electric power, communication and road and access facilities. Failure on the part of **LESSEE** to acquaint itself with all available information pertaining to the Premises will not relieve **LESSEE** from the responsibility of furnishing the required facilities and services and for compliance with the terms and conditions of this **LEASE**. **LESSOR** assumes no responsibility or obligation to provide any roads or other facilities of whatever nature or for any understanding or representation made by any of its officers or agents during or prior to final execution of this **LEASE** unless these provisions expressly provide for the furnishing of such facilities and such understanding or representation is specifically stated in this **LEASE**.

D. **Prohibited Activities: LESSEE** may perform maintenance of personal property, including but not limited to changing oil or fluids and servicing filters, on the Premises and store any fuel, or store or utilize any fuel tanks (whether empty or containing fuel or other hazardous substances), fuel trailers, hoses or any other fueling mechanisms on the Premises as reasonably necessary for normal business operations; provided, however, that any maintenance and fuel storage or handling on the Premises shall comply with Environmental Law and the applicable Best Management Practices and **LESSEE** shall remove all fuel trailers, hoses, tanks or other fueling mechanisms from the Premises that are owned by **LESSEE** prior to the expiration or termination of this **LEASE**.

E. **Water Levels: LESSEE** hereby waives any and all claims on the part of the **LESSEE**, which may arise or be incident to regulation of water levels associated with the Premises by the **LESSOR** and/or the U.S. Army Corps of Engineers, so long as such regulation is in accordance with the rules and regulations applicable thereto.

F. **Navigation: LESSEE** shall not do or cause to be done anything whereby the full and free use by the public of the water areas of and surrounding the Premises will suffer unreasonable interference. This condition does not apply to temporary dockage and/or mooring facilities that may be provided by **LESSEE** pursuant to and in accordance with the provisions of this **LEASE**.

G. **Compliance with Minimum Wage Law:** The **LESSEE** shall comply with the Fair Labor Standards Act, 29 USCS 201, et seq. The Act is the minimum wage law. Its requirement that the **LESSEE** pay "not less" than the rates so determined presupposes the possibility that the **LESSEE** may have to pay higher rates.

H. **Additional Requirements:**

(1) **LESSEE** shall not install or permit to be installed pit or vault latrines.

(2) **LESSEE** will allow the discharge of firearms on the Premises only as permitted by Florida law and consistent with the exercise of reasonable care and prudence, and **LESSEE** will not display or permit others to display firearms in a reckless manner.

(3) **LESSEE** shall not discharge nor permit others to discharge sewage effluent into the water areas of and surrounding the Premises provided, however, that **LESSOR** acknowledges and accepts the presence of currently existing septic systems on the Premises to the extent such systems are in compliance with applicable law.

(4) **LESSEE** shall not engage in any business activity on the Premises not expressly authorized in this **LEASE** unless otherwise authorized in writing by **LESSOR**.

(5) Except for the Permitted Uses (as to which no consent of **LESSOR** is required), **LESSEE**: shall not permit or suffer any nuisance on the Premises or the commission of waste thereon; shall not conduct mining operations or drill for oil or gas upon the Premises; shall not remove sand, gravel, or kindred substance from the ground; or shall not, in any manner, substantially change the contour or condition of the Premises unless prior approval is granted in writing by **LESSOR**, which approval may be withheld in **LESSOR's** sole discretion.

(6) **LESSEE** will use the Premises and all rights and privileges herein granted to the extent needed in carrying out the true intent and purpose of this **LEASE**.

(7) **LESSEE** shall cooperate with **LESSOR**, its employees, agents, and assigns in carrying out the intent and purposes of this **LEASE**.

l. **Safety:**

(1) It is the **LESSEE's** sole duty to provide safe and healthful working conditions to its employees on and about the Premises. The **LESSOR** assumes no duty for supervision of the **LESSEE**.

(2) The **LESSEE** shall provide first aid services and medical care to its employees. The **LESSOR** assumes no duty with regard to the supervision of the **LESSEE**.

(3) The **LESSEE** shall develop and maintain an effective fire protection and prevention program and good housekeeping practices on the Premises throughout the Lease Term.

(4) The **LESSOR** may order that the **LESSEE** halt operations under this **LEASE** if a condition of immediate danger to the public and/or **LESSOR's** employees, equipment or property exists. This provision shall not shift responsibility or risk of loss for injuries or damage sustained from the **LESSEE** to the **LESSOR**, and the **LESSEE** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property on the Premises.

(5) The **LESSEE** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective measures.

(6) The **LESSEE** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or District safety and health standards.

(7) The **LESSEE** shall take the necessary precautions to protect customers and other members of the public that may be on or near the Premises from harm due to the operations of the **LESSEE**.

J. **Advertising and Commercial Activity:** There shall be absolutely no advertising, either visual or audio, placed on or conducted on the Premises except for names and logos appearing on **LESSEE'S** vehicles, gates or as otherwise may be existing on the date of this **LEASE**.

K. **Lead Based Paint Disclosure:** See Lead Based Paint Disclosure attached hereto and made a part hereof as **Schedule "7"**, if applicable.

L. **Inspection Rights:** The **LESSEE** shall maintain records and the **LESSOR** shall have inspection and audit rights as follows:

(1) **Maintenance of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, **LESSEE** shall maintain all financial and non-financial records and reports related to the Premises or this **LEASE**, including but not limited to, records related to the application of pesticides and fertilizers. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this **LEASE**.

(2) **Examination of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, **LESSOR** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records related to the Premises or directly or indirectly related to this **LEASE**. Such examination may be made at any time during the Lease Term and through and including five (5) years from the date of final payment under this **LEASE** and upon reasonable notice, time and place.

(3) Records that pertain to the Premises or this **LEASE**: Notwithstanding the provisions of **subparagraph (1)** and **subparagraph (2)** above, in no event shall **LESSEE** be obligated to maintain or provide any financial or accounting information (e.g., pro-formas. tax returns, production reports, financial statements, appraisals, etc) or other information that pertains to **LESSEE**'s business operations or assets other than the Premises. [**SUGAR LEASE - provided that **LESSEE** agrees to maintain and, upon request, provide reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage**][**CITRUS LEASE -

provided that **LESSEE** agrees to maintain and, upon request, provide reports showing the acreage of citrus trees and the boxes of citrus harvested from such acreage**], in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by **LESSOR**, subject to the trade secret protocol established by **LESSEE**.

(4) With respect to any such information made available to **LESSOR** pursuant to this **subparagraph L**, that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), **LESSOR** shall follow the trade secret protocol established by **LESSOR** and **LESSEE**.

(5) Extended Availability of Records for Legal Disputes: In the event that the **LESSOR** should become involved in a legal dispute with a third party arising from performance under this **LEASE**, the **LESSEE** shall extend the period of maintenance for all records relating to the **LEASE** until the final disposition of the legal dispute, and all such records shall be made readily available to the **LESSOR**.

M. **Public Access:** The **LESSEE** shall allow public access to all **LEASE** related documents in accordance with the provisions of Chapter 119, Florida Statutes, subject to all applicable exemptions and only as and to the extent Chapter 119 is actually applicable to **LESSEE** (it being agreed that this **subparagraph M.** is not an admission or agreement by **LESSEE** that Chapter 119 is applicable thereto). Should the **LESSEE** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall by upon the **LESSEE**.

N. **Cooperation:** From the Commencement Date hereof through the Expiration Date, **LESSEE** shall cooperate in good faith with **LESSOR's** Credit Providers to provide information related to the Premises (and not the **LESSEE's** business or other assets) and necessary for the original issuance or refinancing of the Certificates of Participation, so long as such Credit Providers execute and deliver to **LESSEE** a confidentiality agreement reasonably acceptable to **LESSEE**. **LESSOR** shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by **LESSEE** in providing the information pursuant to this subparagraph (e.g., copying fees, but not including attorneys' fees incurred by **LESSEE** in connection with such requests).

O. [**SUGAR LEASE – **Intentionally Deleted****]

[CITRUS LEASE - Loss of Trees Due to Canker:**

(1) If the citrus trees on the Premises are destroyed by or infected with Canker or other diseases or parasites, or are destroyed by civil authorities in connection with programs to control the spread of Canker or other diseases or parasites, **LESSOR** shall be entitled to receive all tree replacement payments or awards from the federal, state or local authorities made for, or with respect to, the destroyed trees. **LESSOR** will decide, in its sole and absolute discretion, how such payments or awards will be used. **LESSOR** may assign this right or transfer the payments or awards received, if it so elects, to **LESSEE**; provided, however, that **LESSEE** shall use any funds received or awards made as the **LESSOR** directs. **LESSEE** will support and assist **LESSOR** in connection with any applications by **LESSOR** for such payments

or awards. **LESSEE** shall retain all Casualty insurance proceeds from policies carried by **LESSEE** insuring against the loss of citrus trees as a result of canker or other diseases or parasites.

(2) **LESSEE** shall be entitled to payments or awards from the federal, state or local authorities made for, or with respect to, lost future production, reduced by any insurance that **LESSEE** may have for lost future production.**]

P. **Operations Contracts:** To the extent that **LESSEE** may, at any time, desire to enter into any contract, license, sublease or other agreement in connection with **LESSEE**'s operations which is not terminable without penalty upon thirty (30) days notice and is binding on the Premises or **LESSOR** after the Expiration Date, then **LESSEE** shall give a copy of such agreement to **LESSOR**. If **LESSOR** consents at its sole and absolute discretion to **LESSEE**'s execution of such contract, license, sublease or other agreement, then, to the extent that the term thereof extends beyond the Expiration Date, **LESSOR** shall be deemed to have agreed to assume the provisions of such contract, license, sublease or other agreement from and after the date thereof (each, a "New Agreement"). Even though the foregoing assumption shall be automatic and self-effective without the necessity to execute any further documentation evidencing the same, **LESSOR** agrees to promptly execute any additional documents reasonably required by **LESSEE** to evidence **LESSOR**'s assumption of such contract, license, sublease or other agreement described in this Paragraph. In the event that **LESSEE** submits a contract, license, sublease or other agreement to **LESSOR** for its approval pursuant to this Paragraph and, unless **LESSOR** advises **LESSEE** in writing within forty-five (45) days after receipt thereof that **LESSOR** has not approved such contract, license, sublease or other agreement, then the same shall be deemed to be approved thereby.

34. **Covenant of Quiet Enjoyment.** Provided that **LESSEE** faithfully performs all duties of **LESSEE** hereunder and complies with all term and conditions of this **LEASE**, **LESSEE** shall not be disturbed by **LESSOR** in its quiet enjoyment of the Premises, subject to the terms, conditions and provisions of this **LEASE**.

35. **Act of God.** In the event that the citrus trees or sugar cane crops, citrus crops or any other crops located on the Premises are damaged or destroyed due to any hailstorm, tornado, hurricane, flood, fire, or other act of god or any strike, civil disturbance or act of war or terrorism or due to citrus canker or other diseases or parasites, neither **LESSOR** nor **LESSEE** shall have any responsibility or obligation to repair or replace such citrus trees, sugar or citrus crops or to compensate each other or any other Party for the loss thereof.

36. **Condemnation:** Notwithstanding anything to the contrary contained in this **LEASE**, the following shall apply in the event of a taking, condemnation, or transfer in lieu thereof, of the whole or part of the Premises.

A. Total Taking. In the event the entire Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation, this **LEASE** shall automatically terminate upon transfer of title. Rent payments shall then be apportioned to the date of such taking or transfer of title. Except for any separate award applicable solely to **LESSEE**'s business, **LESSEE** shall not be entitled to an

apportionment of any award or payment applicable to the Premises, all of which shall be paid to **LESSOR**. Notwithstanding the foregoing, in the event that **LESSOR** is entitled to possession of the Premises after transfer of title, this **LEASE** shall continue during such extended possession pursuant to the terms hereof.

B. Partial Taking. In the event of a taking or condemnation of only a portion of the Premises or any other portion of the Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation and such taking (i) in **LESSOR's** reasonable determination reduces the value of the Premises by fifty percent (50%) or more, (ii) in **LESSEE**'s reasonable determination, renders the Premises uneconomically feasible to operate or (iii) prevents, and would prevent after reasonable repair and reconstruction efforts by **LESSEE**, use of the Premises for its Permitted Uses under applicable law or regulations (including without limitation with respect to required access), then either **LESSOR** or **LESSEE** may terminate this **LEASE** effective upon the date of such taking or transfer of title. If neither **LESSOR** or **LESSEE** terminate this **LEASE** in such event, or in the event of a lesser taking or condemnation, then this **LEASE** shall continue with respect to all portions of the Premises or personalty not taken, condemned, sold, or transferred and, as applicable, the Rent due under this **LEASE** shall be equitably adjusted, if applicable, to account for the loss of the portion of the Premises taken. **LESSEE** shall not be entitled to an apportionment of any award or payment applicable to the Premises, all of which shall be paid to **LESSOR**.

C. **Condemnation Awards; Damages.** The Parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Premises or any portion thereof and further agree that condemnation awards or damages shall be allocated as follows:

(1) **LESSOR** shall be entitled to the entire award for the condemned Premises or any portion thereof and **LESSEE** shall have no rights to an apportionment of such an award or payment, provided, that, if applicable, **LESSOR** shall make portions of the award available for restoration purposes.

(2) **LESSEE** shall be entitled to make any available separate claim and recover any award thereon for any damages to **LESSEE**'s business operations under any available legal remedy, including but not limited to a claim for business damages, that may be allowable under applicable law. **LESSOR** shall have no rights to an apportionment of such an award or payment.

D. **Non-Affected Premises.** Notwithstanding any other provision of this **Paragraph 36**, any compensation for a temporary taking shall be payable to **LESSEE** without participation by **LESSOR**, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Premises.

37. **Joint and Several Liability:** The entities constituting **LESSEE** shall be jointly and severally liable for all obligations of **LESSEE** under this **LEASE**. A failure or default by any of the entities constituting **LESSEE** shall be deemed a failure or default by all of such **LESSEE** entities. Without limiting the foregoing, **LESSEE** agrees that Parent may act as the

representative of each other **LESSEE** and that **LESSOR** may deliver any notice to **LESSEE** to Parent on behalf of each **LESSEE** and rely on any notice given or other action or taken by Parent on behalf of **LESSEE**.

38. **Subordination and Nondisturbance:**

A. Subordination. Subject to the provisions of **subparagraph F.** below, this **LEASE** shall be subject and subordinate to any mortgage, deed of trust, trust indenture, assignment of leases or rents or both, or other instrument evidencing a security interest, which may now or hereafter affect any portion of the Premises, or be created as security for the repayment of any loan or any advance made pursuant to such an instrument or in connection with any sale-leaseback or other form of financing transaction and all renewals, extensions, supplements, consolidations, and other amendments, modifications, and replacements of any of the foregoing instruments ("Mortgage"), and to any ground lease or underlying lease of the Premises or any portion of the Premises whether presently or hereafter existing and all renewals, extensions, supplements, amendments, modifications, and replacements of any of such leases ("Superior Lease"). **LESSEE** shall, at the request of any successor-in-interest to **LESSOR** claiming by, through, or under any Mortgage or Superior Lease, attorn to such person or entity as described below. The foregoing provisions of this **subparagraph A.** shall be self-operative and no further instrument of subordination shall be required to make the interest of any lessor under a Superior Lease (a "Superior Lessor") or any mortgagee, trustee or other holder of or beneficiary under a Mortgage (a "Mortgagee") superior to the interest of **LESSEE** hereunder; provided, however, **LESSEE** shall execute and deliver promptly any certificate or instrument, in recordable form, that **LESSOR**, any Superior Lessor or Mortgagee may reasonably request in confirmation of such subordination.

B. **Rights of Superior Lessor or Mortgagee.** Any Superior Lessor or Mortgagee may elect that this **LEASE** shall have priority over the Superior Lease or Mortgage that it holds and, upon notification to **LESSOR** by such Superior Lessor or Mortgagee, this **LEASE** shall be deemed to have priority over such Superior Lease or Mortgage, whether this **LEASE** is dated prior to or subsequent to the date of such Superior Lease or Mortgage.

C. **Attornment.** If at any time prior to the expiration of the term of this **LEASE**, any Superior Lease shall terminate or be terminated by reason of a default by **LESSOR** as tenant thereunder or any Mortgagee comes into possession of the Premises or the estate created by any Superior Lease by receiver or otherwise, **LESSEE** shall, at the election and upon the demand of any owner of the Premises, or of the Superior Lessor, or of any Mortgagee-in-possession of the Premises, attorn, from time to time, to any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** as a result of any such termination, or as a result of a foreclosure of the Mortgage or the granting of a deed in lieu of foreclosure, upon the then terms and conditions of this **LEASE**, for the remainder of the term. In addition, in no event shall any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** be bound by (i) any payment of Rent or Additional Rent for more than one (1) rental payment in advance, or (ii) any security deposit or the like not actually received by such successor, or (iii) any amendment or modification in this **LEASE** made without the consent of the applicable Superior Lessor or Mortgagee, or (iv) any construction obligation, free rent (other than as provided in this **LEASE**), or other **LESSOR** concession (other than as

provided in this **LEASE**), payment obligation or monetary allowance (other than as provided in this **LEASE**), or (v) any set-off, counterclaim, or the like otherwise available against any prior landlord (including **LESSOR**), or (vi) any act or omission of any prior landlord (including **LESSOR**.

D. **Rights Accruing Automatically.** The provisions of this Paragraph shall inure to the benefit of any such successor-in-interest to **LESSOR**, shall apply and shall be self-operative upon any such demand, and no further instrument shall be required to give effect to such provisions. **LESSEE**, however, upon demand of any such successor-in-interest to **LESSOR**, shall execute, from time to time, instruments in confirmation of the foregoing provisions of this Paragraph, reasonably satisfactory to any such successor-in-interest to **LESSOR**, acknowledging such attornment and setting forth the terms and conditions of its tenancy.

E. **Limitation on Rights of Tenant.** As long as any Superior Lease or Mortgage shall exist, **LESSEE** shall not seek to terminate this **LEASE** by reason of any act or omission of **LESSOR** until **LESSEE** shall have given written notice of such act or omission to all Superior Lessors and Mortgagees at such addresses as shall have been furnished to **LESSEE** by such Superior Lessors and Mortgagees and, if any such Superior Lessor or Mortgagee, as the case may be, shall have notified **LESSEE** within ten (10) business days following receipt of such notice of its intention to remedy such act or omission, until a reasonable period of time shall have elapsed following the giving of such notice (but not to exceed sixty (60) days), during which period such Superior Lessors and Mortgagees shall have the right, but not the obligation, to remedy such act or omission. The foregoing shall not, however, be deemed to impose upon **LESSOR** any obligations not otherwise expressly set forth in this **LEASE**.

F. **SNDA.** Notwithstanding anything to the contrary contained in this Paragraph, **LESSOR** shall obtain on the Commencement Date and thereafter shall maintain for the benefit of **LESSEE**, a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") from each and every Mortgagee and Superior Lessor to which this **LEASE** shall be subordinate, such SNDA to be in a commercially reasonable form and content for any financing or refinancing relating to the Premises, including the original issuance or refinancing of the Certificates of Participation reasonably acceptable to **LESSEE** and the applicable Mortgagee and Superior Lessor. The subordination of this **LEASE** by LESSEE provided in **subparagraph A.** hereof is conditioned upon and subject to the execution and delivery of the SNDA described herein, which shall allow **LESSEE** to remain in possession of the Premises provided that a Default has not then occurred, subject to the terms and conditions of this **LEASE** and the SNDA as negotiated and agreed among **LESSEE**, the applicable Mortgagee and Superior Lessor.

39. **Right of First Refusal:**

A. Offer to Lease Premises. As to any proposed or solicited agricultural leases for all or any portion of the Premises which the **LESSOR** intends to accept or enter into (the "Proposed Lease") that would provide for commencement within one (1) year following the Expiration Date (the "ROFR Period"), so long as no Default then exists under this **LEASE**, the **LESSOR** shall deliver a copy of such Proposed Lease to the Parent and **LESSEE** shall have a right of first refusal ("ROFR") to lease the Premises from **LESSOR** on terms and conditions not

less favorable to the **LESSOR** than those set forth in the Proposed Lease. The ROFR shall not apply to any proposed or solicited leases that are for uses other than agricultural uses.

B. Exercise of Right. If the **LESSEE** desires to lease the applicable portion of the Premises from **LESSOR** on the terms and conditions set forth in any Proposed Lease, **LESSEE** shall deliver a written notice of its election to the **LESSOR** within forty (40) Calendar Days of the date of receipt of the copy of the Proposed Lease by the Parent.

C. Termination of the Right of First Refusal. The ROFR shall expire, terminate and be of no further force and effect on the earliest of (i) the one year anniversary of the Expiration Date, (ii) the Expiration Date if the **LEASE** is terminated as a result of a Default by **LESSEE**, (iii) the date **LESSEE** fails to timely deliver its election as prescribed in **Paragraph 39.B** above or (iv) the date **LESSEE** fails to enter into a lease agreement consistent with the terms and conditions set forth in the Proposed Lease after electing to do so.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) FOLLOW]

The Parties or their duly authorized representatives hereby execute this **LEASE** on the date written below by each Party's signature.

LESSOR:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

Witness: _____ By: _____
Name: _____
As its: _____
Witness _____ Date of Execution _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ of the South Florida Water Management District, a public corporation of the State of Florida, on behalf of the corporation, who is personally known to me.

_____
Notary Public

_____
Print

My Commission Expires: _____

LESSEE:

UNITED STATES SUGAR CORPORATION, a Delaware corporation

Witness: _____ By: _____
Name: _____
As its: _____
Witness _____ Date of Execution _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, the _____ of United States Sugar

Corporation, a Delaware corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

_____
Notary Public

_____
Print

My Commission Expires: _____

LESSEE:

SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation

Witness: _____

By: _____
Name: _____
As its: _____
Date of Execution _____

Witness _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, the _____ of Southern Gardens Groves Corporation, a Florida corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

_____
Notary Public

_____
Print

My Commission Expires: _____

Exhibit C

RESOLUTION NO. 2009-0704

A RESOLUTION OF THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT FURTHER AMENDING AND SUPPLEMENTING RESOLUTION 2008-1027 WHICH AUTHORIZED, AMONG OTHER THINGS, THE LEASE-PURCHASE FINANCING AND REFINANCING OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND EQUIPPING OF THE DISTRICT'S CAPITAL PROJECTS, PROGRAMS AND WORKS, INCLUDING THE ACQUISITION OF THE ASSETS OF UNITED STATES SUGAR CORPORATION, IN THE MANNER DESCRIBED THEREIN; AUTHORIZES THE EXECUTION AND DELIVERY OF AN AMENDED AND RESTATED AGREEMENT FOR SALE AND PURCHASE AMONG THE GOVERNING BOARD AND UNITED STATES SUGAR CORPRATION AND ITS AFFILIATES; PROVIDING FOR OTHER MATTERS RELATED THEREWITH; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, pursuant to Resolution 2008-1027 duly adopted on October 9, 2008 by the Governing Board of the South Florida Water Management District (the "District"), as amended and supplemented by Resolution 2008-1109 duly adopted by the District on November 13, 2008 authorized establishing a master lease purchase program (the "Lease Purchase Program") in order to finance and refinance certain capital projects, programs and works through the issuance of both fixed rate and variable rate certificates of participation ("Certificates") evidencing undivided proportionate interests in basic lease payments, which the District, as Lessee, will make pursuant to the Master Lease Purchase Agreement, to be issued in one or more series pursuant to Section 373.584, Florida Statutes, and all other applicable provisions of law, including, particularly, all powers and authority of municipalities to issue bonds under state law (collectively, the "Act"); and

WHEREAS, as part of its water resource development program related to the Everglades ecosystem which is known as the "River of Grass Acquisition Project," on December 16, 2008 the District approved an Agreement for Sale and Purchase with United States Sugar Corporation and certain related entities (collectively, "US Sugar") in order to provide for the current acquisition of certain lands and improvements that will substantially alter the manner and approach to restoring, protecting and preserving the Everglades ecosystem; and

WHEREAS, undertaking the acquisition of the lands and improvements from US Sugar as part of the River of Grass Acquisition Project, was previously found to serve a public purpose as set forth in the Resolution 2008-1027; and

WHEREAS, the District has considered further negotiations with US Sugar to currently purchase certain land and improvements together with the right to purchase additional lands

(collectively the "US Sugar Lands") in the future owned by US Sugar pursuant to the terms and provisions of an Amended and Restated Agreement for Sale and Purchase (the "Amended Agreement") presented to the District for its approval at this meeting; and

WHEREAS, pursuant to the Act the District may issue revenue bonds to finance the undertaking of any capital or other project for the purpose of Chapter 373, Florida Statutes; and

WHEREAS, the District reaffirms its intention to establish the Lease Purchase Program in order to finance and refinance certain capital projects, programs and works, which includes land upon which such capital projects, programs and works may be located in the future, through the issuance of the Certificates, which are included in the definition of "bond" within the meaning of Section 373.584(4)(a) Florida Statutes; and

WHEREAS, pursuant to Section 373.584(4)(b) Florida Statutes, the term "project" means a governmental undertaking approved by the District and includes all property rights, easements, and franchises relating thereto and deemed necessary or convenient for the construction, acquisition or operation thereof, and embraces any capital expenditure which the Governing Board shall deem to be made for a public purpose; and

WHEREAS, the District reaffirms and finds that entering into the Amended Agreement and undertaking the acquisition of the US Sugar Lands from US Sugar along with the Leaseback Agreement which is part and parcel to the Amended Agreement as a component of the River of Grass Acquisition Project, will serve a paramount public purpose by providing greater opportunities to restore the ecosystem as more fully described in the Staff Report attached as Exhibit A to Resolution 2008-1027; and

WHEREAS, acquisition of the US Sugar Lands is a governmental undertaking and a project within the meaning of Section 373.584(4)(b) Florida Statutes and is a component of the River of Grass Acquisition Project which has been previously approved by the District; and

WHEREAS, in order to finance the cost of the initial project under the Lease Purchase Program which is the acquisition of the US Sugar Lands the District intends to cause a series of the Certificates to be issued and sold the proceeds of which sale will be used to pay the costs to acquire the US Sugar Lands and the related costs of issuing the series of Certificates; and

WHEREAS, the Certificates will be payable from basic lease payments to be made by the District under the initial lease Schedule related to the lease of the US Sugar Lands or other lands it currently owns; and

NOW, THEREFORE, BE IT RESOLVED BY THE GOVERNING BOARD OF THE SOUTH FLORIDA WATER MANAGEMENT DISTRICT, FLORIDA, as follows:

SECTION 1. Recitals. The recitals set forth above are adopted as the findings of the District and are incorporated herein.

SECTION 2. Authorization of Amended and Restated Agreement for Sale and Purchase. The Governing Board hereby authorizes and approves the Amended Agreement in substantially the form attached hereto. The Chair or Vice Chair of the Governing Board is hereby authorized to execute and deliver the Amended Agreement with such changes as the Chair or Vice-Chair deems necessary and approves when executing the same, with such execution to constitute conclusive evidence of such officer's approval and the District's approval of any changes therein from the form of Amended Agreement attached hereto.

SECTION 3. Authority for this Resolution. This Resolution is adopted pursuant to the provisions of the Act for the purpose of correcting the record created by Resolution 2008-1027 and Resolution 2008-1109 (the "Prior Resolutions") and, except as modified and supplemented hereby, the provisions of Prior Resolutions shall remain in full force and effect. In the event of conflicts between the Prior resolutions and this Resolution, the terms of this Resolution shall control.

SECTION 4. Severability of Invalid Provisions. If any one or more of the provisions of this Resolution should be deemed contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such provisions shall be null and void and shall be deemed separate from the remaining provisions, and shall in no way affect the validity of any of the other provisions of this Resolution.

SECTION 5. Effective Date. This Resolution shall take effect upon its passage in the manner provided by law.

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Resolution No. 2009-508

PASSED AND ADOPTED this 13th day of May, 2009.

SOUTH FLORIDA WATER MANAGEMENT DISTRICT
by its Governing Board

Chair

(SEAL)

ATTEST:

Secretary

Legal Form Approved:
BRYANT MILLER OLIVE, Counsel to
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

By: Bryant Miller Olive P.A.

Date: May 13th 2009

125280/001/00349695.DOCv3;

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

STATE OF FLORIDA

COUNTY OF PALM BEACH

CERTIFICATE

I, **JACQUELINE W. McGORTY**, Secretary to the Governing Board of the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, do hereby certify that the attached is a true and correct copy of SFWMD Resolution No. 2009-500A, duly adopted by the Governing Board of said District on the 13th day of May , A. D., 2009.

I FURTHER CERTIFY that said Resolution has not been revoked, modified, or changed in any way and is at the date of this Certification in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Governing Board, this 13th day of May, A. D., 2009.

(Seal)

GOVERNING BOARD OF SOUTH FLORIDA WATER MANAGEMENT DISTRICT
STATE OF FLORIDA
SEAL
Established 1949

Jacqueline W. McGorty
Secretary to Governing Board

EXHIBIT
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STATE OF FLORIDA
SOUTH FLORIDA WATER MANAGEMENT DISTRICT

NEW HOPE SUGAR COMPANY AND OKEELANTA CORPORATION, *Petitioners,* *v.* SOUTH FLORIDA WATER MANAGEMENT DISTRICT *Respondent*	)	Case No.

PETITION FOR FORMAL ADMINISTRATIVE HEARING

Petitioners, New Hope Sugar Company and Okeelanta Corporation (collectively "New Hope"[1]), pursuant to sections 120.569 and 120.57, Florida Statutes, and Rule 28-106.201, Florida Administrative Code ("F.A.C."), request a formal administrative hearing challenging an agency action of the South Florida Water Management District ("SFWMD" or "District") and state:

INTRODUCTION

1. The agency action at issue (the "Agency Action") is the District Governing Board's (the "Board") Approval of the Amended and Restated Purchase and Sale Agreement (the "Agreement"; Exhibit A) between the District and United States Sugar Corporation ("USSC") and a related Ground Lease (the "Lease"; Exhibit B), which is incorporated into that Agreement.

[1] New Hope and Okeelanta will be collectively referred to as "New Hope" and by the use of the singular as opposed to the plural.

2. The Agency Action is "agency action" as defined in section 120.52(2), Florida Statutes, as it commits the District through a binding contract to purchase certain lands from USSC and transfer to USSC, on or before March 31, 2010, the sum of $536,000,000.

3. Under the Agreement and the Lease, the District agrees to purchase certain USSC landholdings for $536 million in cash, and to then lease back those same lands to USSC for a period of at least 20 years. The rent to be paid by USSC for that land is only a small fraction of what the District will pay annually in debt service, thus burdening the public, while enriching USSC. After paying hundreds of millions of dollars for the land, for the first 20 years, the District is limited, from a total of 40,000 acres of sugar cane land ostensibly purchased, to "takedowns" (i.e. public use) of only 10,000 acres in the first decade and another 10,000 acres in the second decade. The remaining lands are guaranteed to USSC for its use at a rental rate that is a fraction of the annual debt service cost to taxpayers.[2]

4. While there is an additional 33,000 acres of citrus land in the purchase that can be taken down for projects, that land is not part of any identified project configuration set out by the District. Absent use of this land for projects it will likewise remain under the private control of USSC. Upon information and belief the citrus land[3]

[2] Depending on the interest rate the actual rental payment would cover approximately one-seventh of the public debt service, $6 million out of $43 million per year.

[3] Upon information and belief the citrus land was purchased for far above market value as the trees on those lands suffer from a disease known as "greening" that significantly depresses the marketability and market value of that land. The impact of this was not taken into account in the Agency Action.

was required by USSC as a condition to purchase the sugar cane land, only half of which is obtainable over the next 20 years, absent a further investment of $791 million (or more) that the District does not have the means to fund.

5. Not only is USSC allowed to retain the bulk of the lands sold to SFWMD at a rental rate which represents a fraction (about one-seventh) of the public debt cost for at least 20 years, but afterwards USSC is guaranteed to retain its lands via a right of first refusal in the Lease. This gives USSC the power to continue to operate for an indefinite period, and that after extracting the full value of its land from the public treasury. Moreover, because the District does not have the financial ability to construct projects even on the land that is available to it, USSC's ability to use its land under the Lease and right of first refusal could be far more than 20 years.

6. While cloaked under the guise of environmental restoration, the Agency Action is nothing more than an improper and ill-conceived use of public funds to subsidize USSC. The diversion of funds to land acquisition that is not tied to any project does not meet the statutory requirements for water management district land purchases. Moreover, the Agency Action will prevent the District from carrying out its statutory and regulatory mandates with regards to Everglades Restoration and compliance with water quality standards for Lake Okeechobee (the "Lake") and the Everglades Protection Area ("Everglades"). The Agency Action authorizes the acquisition of a large block of land that will *de facto* be used for purposes outside the scope of the District's authority as the land will remain under USSC's long-term control, and is contractually reserved for its private use.

7. For the acquired land to actually be used for the claimed purpose, hundreds of millions more dollars must be spent to acquire additional lands from USSC, all so that the entire block of land purchased under the Agency Action may be put to public use. And, after that, multiple billions more would be needed to construct infrastructure on the vast landholdings in question. Absent all this, the land will remain under the control of USSC.

8. The District's own analyses show that it does not have the ability to consummate the additional necessary transactions. Added to that, the restoration projects that are the stated reason for the Agency Action would require billions of dollars more for construction and engineering, with no identified source for this additional money. At best, any public purpose is incidental and speculative, as it is contingent upon billions of additional dollars that simply do not exist. Indeed, the prior agency action to purchase USSC lands (itself just a fraction of the total cost of the conceptual project) was rescinded due to economic infeasibility.

9. The District paints a colorful picture of projects it claims are the basis for the purchase. It has gone so far as to commission the creation of nine possible project configurations from stakeholders and has developed its own concepts of possible water storage and treatment projects in the Everglades Agricultural Area (EAA). Despite this fanciful display of unaffordable possibilities, SFWMD has no actual, achievable plans for the USSC land. In fact, the project configurations – the supposed purpose of the acquisition -- primarily require land other than what is to be acquired from USSC. The District has developed no analysis showing how it intends to acquire the land actually

needed for any specific project involving the land purchased via the Agency Action, much less obtain the funding necessary for the infrastructure it claims the Agency Action is intended to further.

10. SFWMD has no identified funding source to implement anything of significance on the USSC lands. While the supposed purpose is to build a massive EAA flow way, with reservoirs and treatment areas of over 100,000 acres, only 20,000 acres of the EAA land purchased would even be available for projects over the next 20 years, absent SFWMD coming up with an $791 million dollars more for additional land acquisition. The District has admitted it does not have the ability to finance this second purchase, much less the many billions of dollars more that would be needed for infrastructure construction.

11. All the District has at the moment are vague conceptual visions of what it might do if it had <u>other</u> land and if it had billions more in available funding for the construction of vast projects that its own Governing Board was told the District cannot afford. The District plans are unaffordable window dressing, which do not a public project make. Moreover, prior to taking the Agency Action the District never considered or established such key details as what project is the basis for the acquisition, how much any such project would cost, or where the District would get the funding for construction.

12. The District does not have the financial ability to fund the acquisition without cuts to ongoing Everglades programs, nor to fund construction and carry the

significant associated operational, maintenance, and energy costs of actually making use of the USSC land in the manner that was the supposed rationale for the purchase.

13. The District has refused and continues to refuse to undertake cost estimates for the supposed public use that is the basis for the USSC purchase. Outside engineering cost analyses, however, show that the cost to implement the primary conceptual project configuration between $5.4 and $8.4 billion would be four to six times the acquisition cost. While no cost figures have been developed for the nine stakeholder alternatives, any of them would require billions in construction funding that the District does not have and does not claim to have the ability to secure.

14. The USSC Purchase would result in the same exact use of the land before and after the transaction, the traditional agricultural use contractually reserved to the traditional user, USSC, with only one difference, the payment of $536 million of the taxpayer money to the traditional user to engage in the traditional use. The bulk of the assets cannot be developed into a project because (i) the District does not have the financial ability to do so and (ii) the Agreement itself limits the District's right to use the land unless it exercises an "option" to purchase $791million more from USSC.

15. As the District does not have the ability to exercise the "option" (i.e., purchasing 107,000 acres for at least an additional $791 million) and construct its intended projects on it, the USSC land will continue to be used for agriculture purposes. At bottom this is a thinly-veiled, state subsidy to privately-owned USSC, which will pay a fraction of the public debt cost to retain the lands it ostensibly sold to the District.

16. The purchase set out in the Agreement will commit the District to abandonment of planned Everglades restoration projects, the money for which is diverted by the Agency Action. In deposition testimony in related litigation, District staff has admitted that the District has cancelled the Everglades Agricultural Area (EAA) Reservoir Project and, subject to final Governing Board approval, will cancel the related Everglades Agricultural Area Conveyance and Regional Treatment (ECART) to facilitate the USSC land acquisition set out in the Agency Action. Based on public statements by District staff, further cuts would be needed were the District to attempt to purchase the remaining USSC land necessary to free the present acquisition for program implementation.

17. The EAA Reservoir and ECART are components of a larger plan for water quality compliance, and their abandonment adversely affects New Hope's interest in receiving flood control and water supply services from the District. Due to the abandonment of these projects and the necessary abandonment or delay of other related projects, the District's Agency Action constitutes a *de facto* abandonment of the District's "Long-Term Plan" (discussed below) that is a cornerstone of various Everglades statutes and regulations, compliance schedules, administrative orders and other legal requirements, all of which impact New Hope's substantial interests.

18. Nothing has yet been put forward, nor will the money exist after the acquisition closes, to replace the functions of the projects lost as a result of the Agency Action. This impact to current restoration efforts will become irreversible once the initial land purchase is completed. Once the funds are transferred to USSC, there is no

recourse to retrieve them, and there will be no way to avoid the impacts to the District's Everglades restoration mandates. Likewise, there will be no "point of entry" for substantially affected persons to meaningfully exercise Chapter 120 rights and remedies.

19. As part of what is clearly an intentional refusal to develop key details so as to prejudice and evade administrative or judicial review of the Agency Action prior to closing, the District has refused to calculate or publish implementation and construction costs for the supposed use of the land to be purchased. The District has also refused to specify all programs that will be cut or delayed to accommodate the purchase and the far larger secondary transaction contemplated in the Agreement.

20. District staff has testified in other litigation that these details will not be established until after closing, thus attempting to bootstrap their claim that any administrative review is "speculative" until these details are known. The District has embarked on a campaign of willful blindness so as to avoid even considering key questions and then claims that because these issues were not considered, any charge that its action was arbitrary and capricious is premature and will not ripen until after it is too late to have any meaningful remedy at all. Failure of an agency to act properly is an occasion for administrative or judicial review, not an impediment to such review.

21. It is critical that review of the proposed agency action occur at this point in time, as any later remedy would be too little too late. Once the transaction authorized by the Agency Action closes, the funding necessary for Everglades Restoration will be irrevocably lost.

22. The substantial and adverse impact on New Hope is immediate and not merely hypothetical or speculative.

PRELIMINARY INFORMATION

23. The affected agency is the South Florida Water Management District, 3901 Gun Club Road, West Palm Beach, Florida. The District, having ratified the Agreement in the Agency Action, is the lead agency in consummating the USSC acquisition. It is also primarily and statutorily responsible for implementation of the Long-Term Plan and is the agency that would issue and service the approximately $536 million in debt necessary to facilitate the Agency Action.

24. Petitioners are New Hope Sugar Company and Okeelanta Corporation. Both Petitioners have a business address of 200 North Clematis, West Palm Beach, Florida.[4]

25. The names and addresses of Petitioner's attorneys in this matter are:

[4] New Hope and Okeelanta are collectively referred to as "New Hope" and in the singular throughout this petition.

Joseph P. Klock, Jr. Gabriel E. Nieto, P.A. JuanCarlos Antorcha, P.A. RASCO KLOCK REININGER PEREZ ESQUENAZI VIGIL & NIETO 283 Catalonia Avenue Coral Gables, FL 33134 305.476.7111 Jklock@rascoklock.com gnieto@rascoklock.com jantorcha@rascoklock.com	Diane D. Tremor Chris H. Bentley ROSE SUNDSTROM & BENTLEY 2548 Blairstone Pines Drive Tallahassee, Florida 32301 (850) 877-6555 dtremor@rsbattorneys.com chb@rsbattorneys.com

26. The specific agency action challenged is the District's May 13, 2009, resolution ratifying the Agreement and Lease, and its signing of the Agreement on that same day. This Petition is filed within 21 days of the date the District signed the Agreement, and is therefore timely.

STATEMENT OF SUBSTANTIALLY AFFECTED INTERESTS

27. New Hope, together with its affiliates, is the second largest landowner in the EAA, where they own and farm property. New Hope also operates two sugar mills in the area. These mills along with two others operated by USSC and the Sugar Cane Growers' Cooperative of Florida depend on a supply of sugar cane from the EAA for their operational viability. This supply, in turn, depends directly on management of water levels within the EAA, and the water supply and flood control services that are the SFWMD's principal function. The operational functionality of the farms is directly dependent on the District's ability to deliver these water supply and flood control services consistent with the regulatory requirements applicable to the District.

28. It is in New Hope's substantial interest, indeed critical to it, to ensure that Everglades restoration is successfully implemented, and that the District is able to

maintain and fulfill regulatory requirements applicable to Lake Okeechobee and the Everglades Protection Area. The Agency Action will place the District in violation of state law and federal court decrees mandating the implementation of the Long-Term Plan and adversely affect the District's ability to provide necessary services to New Hope.

29. Additionally, New Hope implements Best Management Practices (BMPs)[5] on its farms that are one portion of a coordinated system to meet water quality standards. Failure to meet downstream standards could also require further upstream controls, adversely affecting New Hope's regulatory compliance. The District's abandonment or delay of its portion of the coordinated compliance structure thus threatens New Hope's operational and business interest.

30. The primary surface water source for EAA farms is the Lake, which is in severe and continuing violation of applicable water quality requirements, including the narrative nutrient criteria for phosphorus and nitrogen. The District is required under federal law to implement total maximum daily load requirements for the Lake by 2015. At present discharges into the Lake are several times this water quality requirement, and are also presently violating narrative criteria for nutrient levels. The Agency Action will result in the redirection of efforts to address these Lake issues in favor of debt service for land acquisition that will not provide any environmental benefit at all.

[5] BMPs are on farm controls meant to reduce nutrients. These are coupled with SFWMD infrastructure, such as STAs, to form a coordinated system of water quality compliance, in large part to deal with the high nutrient levels entering the EAA from Lake Okeechobee.

31. The EAA is located between the Lake and the Everglades. The ability of EAA farmers, including New Hope, to meet their regulatory and BMP requirements is adversely affected by the deteriorating Lake water quality. The District has made a *de facto* choice not to adequately address Lake water quality concerns in favor of unattainable project goals in the EAA, as contemplated by the Agency Action. In addition, failure to address Lake water quality affects (i) the ability to discharge water into the Everglades and (ii) the ability to store water in the Lake. These ongoing problems adversely impact the District's ability to provide necessary water supply and flood control services to New Hope's farms and also affect compliance with downstream water quality criteria that could lead to additional upstream regulatory requirements affecting New Hope's farms.

32. The Agency Action will also eliminate and/or substantially delay numerous planned Everglades restoration projects, which will also adversely affect New Hope's recognized interests, including interests for which it pays designated agricultural privilege taxes every year.

33. This action directly affects New Hope's operations as well as diverts its payments to the District for illegal purposes. New Hope:

(i) is dependent on water services, both water supply and flood control, from the water management district that will be affected by the Agency Action and without which New Hope cannot conduct its farming operations;

(ii) Operates under a collective compliance system pursuant to, *inter alia*, Florida Admin. Code Rules 40E-63.102(8) and 40E-63.110(1), that is substantially and adversely affected by any delay in implementation of the Long-Term Plan;

(iii) funds through special purposes taxes the water projects that are designed to meet statutory and regulatory standards, the money for which is being improperly diverted to purposeless land acquistion;

(iv) implements a set of on-farm controls required by state law as part of a coordinated system of water quality measures that is jeopardized by the Agency Action; and

(v) has been a recognized participant in federal and state litigation and state administrative rulemaking proceedings on matters affecting compliance with Everglades statutes and regulations for decades.

Absent participation in this Agency Action, New Hope would lose any opportunity for formal administrative review of the process of abandoning the current compliance mechanism in favor of some unspecified future replacement project for which no funding exists. Unless New Hope is granted a point of entry and allowed to participate at this point in time, any concept of further agency review and decision-making is illusory.

34. In addition, were the conceptual project of a one-million acre-foot reservoir ever built -- which is highly speculative yet is the District's stated intent for the purchase – it would adversely affect Petitioner's interest in water supply from the

District. A reservoir of that size would constitute the second largest lake in Florida. It would add 100,000 or more acres of water surface area resulting in large water losses via evaporation. Water would be diverted to fill the reservoir, yet by the District's own admission it would provide no inter-year water supply. Diversion of water storage from the Lake to such a reservoir, with the resultant losses by evaporation, would jeopardize Petitioner's ability to depend on the District and the Lake for water supply. This impact on Petitioner is magnified by the fact that the reservoir would cause a huge diversion of resources from Lake restoration that, if properly implemented, would allow for greater water storage in the Lake without a significant increase in evaporation losses.

35. EAA farm interests, such as New Hope, have a clear, special and substantial interest in matters relating to the Everglades in general, and to matters affecting the District's compliance with statutory and regulatory requirements affecting the EAA and Everglades Protection Area in particular. The Agency Action directly impacts these interests, as the USSC acquisition will constitute a *de facto* abandonment of key projects in the Long-Term Plan in favor of other, as yet unstated measures, with no indication as to the timing, efficacy or cost-effectiveness of any replacement projects. The Florida Legislature has clearly stated its intent to expedite plans and programs for improving water quality in the Everglades Protection Area and has specifically recognized the special interest of the agricultural industry in the EAA. *See* Fla. Stat. § 373.4592(1) and (3).

36. New Hope's standing to participate in matters affecting compliance with water quality standards in the Everglades and the Phosphorus Rule was recognized by

the Florida Division of Administrative Hearings (DOAH) in *Sugar Cane Growers' Cooperative of Florida v. Florida Department of Environmental Protection*, Case No. 03-02884RP (DOAH 2004), *aff'd, Miccosukee Tribe of Indians v. New Hope Sugar Co.*, 906 So. 2d 1064 (Table) (Fla. 1st DCA 2005). The standing of EAA farmers, including New Hope's predecessor Flo-Sun Land Corporation, to participate in such matters was similarly recognized by the United States Eleventh Circuit Court of Appeals in *United States v South Florida Water Management District*, 922 F. 2d 704 (11th Cir. 1991) ("US v SFWMD").

37. New Hope was, in its own right, through direct participation by its parent, Florida Crystals Corporation, and through membership in the Florida Sugar Cane League, a recognized stakeholder in the rulemaking proceedings before the Florida Environmental Regulation Commission that led to the adoption of the Phosphorus Rule. New Hope, along with USSC, also participated and was recognized to have standing in the Rule Challenge before the DOAH that upheld the Phosphorus Rule (Case No. 03-2883RP), and the appeal to the Florida First District Court of Appeal that affirmed the Final Order in the Rule Challenge.

38. The Agency Action adversely affects New Hope's substantial interests, as it will delay implementation of projects required under the Phosphorus Rule and the related Everglades Forever Act (the "EFA"; section 373.4592, Florida Statutes) to meet the stringent requirements of the rule.

39. The abandonment or delay of Long-Term Plan Projects will adversely affect the District's compliance with water quality standards for,

among other parameters, phosphorus in the Everglades Protection Area. In *US v SFWMD*, 922 F. 2d 704 (11th Cir. 1991), the United States Eleventh Circuit Court of Appeals held that legal proceedings affecting such standards implicated EAA farmers' direct substantial and legally protectable interests. The court held that EAA farmers had a clear and substantial interest in proceedings affecting the translation of the *"state's narrative water quality standards into numeric criteria."; i.e.*, what later became the Phosphorus Rule. *US v SFWMD*, 922 F. 2d at 706. The Eleventh Circuit also noted that EAA farmers had "a legally protectable right . . . to participate and comment in the administrative development of the [regulation], and to pursue an administrative appeal." This recognized both a legally protectable interest and one that was direct and substantial in the setting and compliance with Everglades water quality standards, as denial of a right to participate would cut off farmers' "only means of defending their interest in the water [management] district's services." *Id at* 709.

40. *US v. SFWMD* is still in active litigation to enforce a series of settlement agreements, the primary one of which is a July 26, 1991, settlement between SFWMD and the United States (the "Settlement Agreement"). The Settlement Agreement is implemented by a consent decree entered by the United States District Court for the Southern District of Florida in 1992 (the "Consent Decree"), *US v. SFWMD*, 847 F. Supp 1567 (S.D. Fla. 1992). In 1994, New Hope's predecessor, Flo-Sun Land Corporation, became the first and only agricultural company to sign on to the Settlement Agreement

and Consent Decrees via a separate settlement with the United States (attached as Ex. C). Flo-Sun entered into that agreement and withdrew from pending challenges to the Settlement Agreement in reliance on the District's promises to the United States to implement the Settlement Agreement. The Agency Action adversely affects New Hope's recognized interest in that Settlement Agreement by departing from projects necessary to achieve compliance. The District's compliance with water quality requirements also affects New Hope's interest in receiving flood control and water supply services from the District -- as recognized by the United States Court of Appeals for the Eleventh Circuit. *See US v SFWMD*, 922 F. 2d at 706-09.

41. The Long-Term Plan is the current compliance mechanism for the federal settlement agreement at issue in *US v SFWMD*. The District has, in fact, represented to the federal district court that Long-Term Plan projects would be the remedy for past violations of that Agreement. The Agency Action departs from those commitments in favor of a land purchase that replaces firm timelines with speculative promises of replacement projects in the distant future. The District's inability to take appropriate remedial action on a timely basis due to the Agency Action jeopardizes the services upon which New Hope relies for its farming operations and, in turn, for the cane supply to its mills.

42. The District's ability to discharge water through its Stormwater Treatment Areas (STAs) and into the Everglades is critical for it to be able to provide necessary water supply and flood control services to New Hope's farms. The District is presently operating under Administrative Compliance Orders (ACOs) for STA discharges

entered into with the Florida Department of Environmental Protection (DEP), which require the District to implement the Long-Term Plan. But for the ACOs, the District would be in violation of applicable water quality standards for phosphorus for its STA discharges. The Agency Action and the consequent abandonment and delay of Long-Term Plan projects places the District in violation of those ACOs and affects New Hope's substantial interests in receiving critical services from the District. A sample ACO is attached as Exhibit D.

43. In addition to paying substantial *ad valorem* taxes to the District, New Hope and other EAA farmers pay an agricultural privilege tax pursuant to section 373.4592(6), Florida Statutes, the proceeds of which were intended by the Legislature to fund the farmers' share of water quality projects. These agricultural privilege taxes will, on information and belief, be diverted to USSC debt service. Service for USSC debt is not among the allowed purposes for these taxes, and thus the Agency Action both violates statutory prohibitions on the use of agricultural privilege taxes and adversely affects Petitioners substantial interest in having these payments used to fund Everglades restoration in line with the Settlement Agreement.

44. The District is expending state funds and incurring state debt for the private purpose of subsidizing USSC. The transaction grants USSC a preferential, ongoing state subsidy by allowing USSC to retain long-term usage and control of its lands for a fraction of the public debt service to acquire those same lands. Thus, in addition to the operational impacts outlined above, the Agency Action will adversely affect New Hope's business interests, by illegally and preferentially subsidizing the

business operations of its largest competitor. As noted above, the Legislature has specifically recognized the economic interests of the agricultural industry within the EAA in the enactment of its statutes governing Everglades improvement and management.

45. In addition to Florida's Administrative Procedure Act, which requires an administrative hearing when an agency determines the substantial interests of a party, the Legislature has mandated that disputes over land management plans of a water management district are to be resolved under Chapter 120, Florida Statutes. Fla. Stat. § 373.1391(1)(c). The management of the USSC land and other land owned by the District directly impacts New Hope's farming operation and its environmental interest. Thus, an administrative proceeding pursuant to chapter 120 is directly contemplated by a statute the District is violating through the Agency Action.

DISPUTED ISSUES OF MATERIAL FACT

46. New Hope has identified the following potentially disputed issues of material fact and mixed issues of fact and law;

a. Whether the District's Agency Action is outside the scope of the District's authority to acquire property under section 373.139, Florida Statutes.

b. Whether the District properly accounted for the value of the preferential lease and right of first refusal.

c. Whether the Agency Action improperly subsidizes USSC.

d. Whether the District's inability to implement projects on the USSC land, coupled with the Lease terms, allows USSC to operate its business at public expense for the foreseeable future.

e. Whether the District's environmental justifications for the USSC acquisition are arbitrary and capricious.

f. Whether the District has any presently defined use for the USSC land within the scope of its land acquisition powers.

g. Whether the District has any non-speculative, achievable use for the USSC land within the scope of its land acquisition powers.

h. Whether and when the District will have the financial capability to utilize USSC land for the purpose that was the supposed basis for the purchase.

i. Whether the lack of any plan for the implementation of improvements on the land involved in the Purchase within a defined or predictable time frame negates the stated purpose and statutory authority of the transaction.

j. Whether the Agency Action is a violation by the District of statutory requirements prohibiting it from entering into a contract without a commitment for financing.

k. Whether the Everglades Forever Act and Phosphorus Rule require the District to implement the Long-Term Plan.

l. Whether the Agency Action will result in Long-Term Plan projects being cancelled and/or timelines not being met.

m. Whether the Agency Action, which reflects an abandonment of Projects in the Long-Term Plan, in favor of speculative alternatives, is a *de facto* change in the Long-Term Plan.

n. Whether the Agency Action, which will result in Long-Term Plan projects being cancelled and/or timelines not being met, is inconsistent with the definition of Best Available Phosphorus Reduction Technology ("BAPRT") in the Phosphorus Rule or results in failure or delay in the implementation of BAPRT.

o. Whether in taking the Agency Action, which will result in Long-Term Plan projects being cancelled and/or timelines not being met, the District was required to demonstrate that the change will include specific replacement projects that constitute the best available technology for the reduction of phosphorus discharges to the Everglades.

p. Whether the District has refused to acknowledge now what specific cuts it will make to existing programs to fund the Agency Action and the subsequent larger land purchase contemplated in the Agreement so as to thwart administrative or judicial review of the Agency Action.

q. Whether the District's decision to divert funds from the Long-Term Plan toward the purchase of USSC lands without any identification of replacement projects or showing that such replacement projects constitute the best available technology for the reduction of phosphorus discharges to the Everglades is contrary to the EFA, which requires that the Long-Term Plan be expeditiously implemented and that it constitute the best available technology for the reduction of phosphorus.

r. Whether the District properly considered the effect of diverting Everglades project funding to the USSC acquisition on statutory and regulatory timelines

for water quality requirements in Lake Okeechobee and/or the Everglades Protection Area.

s. Whether the Agency Action, and the resulting cancellation and/or delay of long-term plan projects, violates the compliance schedules in DEP Administrative Compliance Orders approving National Pollutant Discharge Elimination System (NPDES) permits for the STAs, thereby placing the District in violation of state and federal law.

t. Whether the District's Agency Action is arbitrary or capricious.

u. Whether the proceeds of the agricultural privilege tax will be unlawfully diverted as a result of the Agency Action.

ULTIMATE FACTS ALLEGED

47. Petitioners incorporate by reference Paragraphs 1-45 above, as if fully restated herein.

A. <u>The Initial Deal</u>

48. On June 24, 2008, Governor Charlie Crist and the Vice Chair of the District's Governing Board, Shannon Estenoz, announced that the District would purchase a future interest in the assets of USSC for $1.75 billion for the purpose of establishing a flow way between Lake Okeechobee and the Everglades. During the preceding eight months, officials from the Executive Office of the Governor, the District, and DEP had negotiated this transaction in secret with USSC, and with no public notice or public meetings decided the terms of the sale.

49. On June 24, 2008, USSC and the District entered into a written agreement -- the "Statement of Principles" -- setting out the key terms of the purchase of USSC's assets. This Statement of Principles formalized the terms negotiated in secret, including the purchase price, the assets to be purchased, and the future interest aspects of the transaction, whereby full payment would be made at closing with title to the assets transferred six years thereafter.

50. The Statement of Principles was "ratified" by the Board on June 30, 2008. Following that decision, a team of negotiators, led by the Secretary of DEP and including staff from the District, DEP and the Executive Office of the Governor, negotiated the original purchase and sale agreement. That team made all major decisions in secret and later, as will be discussed, presented a final deal for approval by the Governing Board.

51. The Statement of Principles provided that the final price was to be confirmed by appraisals. The District's analysis of the value of USSC, however, came back far below the $2.2 billion true value of the initial proposal (factoring in the free six-year holdover).

B. <u>The Land-Only Deal</u>

52. In an effort to address this valuation crisis, the District and USSC developed an alternative land-only structure (the "Land-Only Deal"). Under this approach, USSC would remain in business and continue to farm for an indefinite period of time after still receiving more than the District's financial consultants' estimate of the total value of the company.

53. As opposed to the initial proposal, where USSC was to cease operations after a defined period, under the land-only alternative, USSC was to stay in business, retaining ownership of its mill and refinery and other industrial assets (the "Industrial Assets"). Moreover, the critical need of USSC to unload its Industrial Assets in the original deal disappeared in the new land-only deal, suggesting that the lease and "first refusal rights" for future leases for USSC guaranteed in the latter deal prevents those Industrial Assets from becoming an unused liability for USSC. In other words, the transaction contemplates that the land which provides the necessary feedstock for the mill and refinery was to remain well utilized, in production and under the control of USSC.

54. To ensure this, USSC was also to be given a preferential lease of the land it will sell to the state. For the first six years, USSC could lease its lands at $50 per acre, even though the District's own estimates are that the lease value is much higher. In the seventh year, USSC was to get a bonus -- a free lease of its land for a full year. After that, it was granted a right of first refusal against the District competitively leasing the land, guaranteeing USSC long-term control until such time, if ever, as the District can construct the reservoirs and related projects its staff presented to the Governing Board as the basis for the land purchase.

55. The Land Only Deal was approved by a 4-3 vote of the Governing Board on December 16, 2008. Following that the District and affected parties pursued a bond validation hearing on the Purchase Debt, throughout which the District claimed that there would be no adverse financial impact for the deal. All that changed in February

2009, when the Governor's office announced yet another transaction structure, which was later approved in the Agency Action. The basis for this change was that the District determined that the Land-Only deal was not affordable, and therefore decided to structure the transaction in phases (with the same or larger overall cost) hoping for better fortunes in later years and less opposition from the public to its initial deal with USSC.

C. The Third Attempt

56. Having found that the first two deals were unaffordable, the District again revised the transaction on May 13, 2009. The supposed basis was to allow the acquisition to proceed in stages, with District staff stating that the agency could not afford the full $1.34 billion cost of the Land-Only Deal. According to its terms, the Agreement approved on May 13, 2009, supercedes the prior Purchase and Sale Agreement approved on December 16, 2008.

57. While crafted to make the transaction cost appear smaller, the new deal is structured so that to actually make use of the land purchased, the District would need to pay the same $1.34 billion price as the Land Only deal. The new structure divides the purchase into a $536 million first step and a $791 million second. The end cost of the land acquisition is at least the same and the transaction is structured so as to require both purchases for the land purchased to be put to public use in the next 20 years.

58. The end result is also the same. The Agency Action, like its predecessor actions, constitutes a purposeless land acquisition not tied to any project by an agency that does not claim to have any ability to do anything beyond the acquisition. The net

result is that while the initial public cost is reduced, the lack of public purpose remains and all that results is USSC continuing to use and enjoy its land after receiving the full value thereof from the public treasury.

59. The present structure requires the District to pay $536 million ostensibly for 73,000 acres of land. However, only 20,000 of those acres are usable for the stated purpose. Roughly 33,000 acres are citrus land located outside the District's stated project configurations. Of the remaining 40,000 acres of land, the District can over the next 20 years only use 20,000 acres, unless it purchases the remaining 107,000 acres of USSC land. To do so would require SFWMD to pay the balance of the $1.34 billion purchase price, or any higher value of that as the land may be appraised at the time of purchase, whichever is higher.

60. The one common theme in these three attempts is that the primary concern is to grant USSC a large public payment for its assets, while allowing USSC to continue in the use and enjoyment of those assets. Never has the District stated what would actually be done with the land, much less where the money would come from to make public use of what the District wants to purchase. The District has, tellingly, provided no analysis of what it would cost to actually construct projects on the USSC land, identified what those projects would be, or determined how it would finance such projects. Under the terms of the proposed agreement, this means that USSC gets to cash out from the public treasury and continue private use of public lands for the indefinite future.

61. Upon information and belief, the District has failed to estimate the construction cost of the projects that it claims are the basis for the Agency Action so as to avoid administrative or judicial review of the issue of whether such a project can ever be implemented. No construction cost estimates were presented to the Governing Board prior to its vote on the Agency Action. Subsequent to that action, the District staff presented cost estimates of various projects (primarily located in the EAA, but not on the land in the initial USSC purchase) with cost estimates ranging from $5 to $25 billion dollars.

62. None of this information was considered by the Board prior to its taking the Agency Action supposedly to further these hypothetical projects.[6] The Agency Action, arbitrarily and capriciously treated the acquisition as a $536 million project without consideration of the full project cost that is at least 10 times as large.

D. <u>Project Cuts to Pay for USSC Debt Service</u>

63. To pay for its Agency Action, the District will redirect funds away from currently-planned projects, including those in the Long-Term Plan. It has already cancelled two projects (at the time of the initial deal) and has indicated that it will make other cuts.

64. There is no indication of what, if anything, will be done with the USSC land, and no planning for replacement projects to provide the functions of those projects abandoned. For the foreseeable future, the only effect is to grant a massive

[6] On information and belief these cost estimates existed prior to May 13, 2008, but the District chose not to consider this information so as to present only a fraction of the project cost to the public.

public subsidy to USSC, which gets to lease its land indefinitely and at a fraction of the public expense. The District will make annual debt service payments of over $43 million for just the first phase, 73,000-acre purchase, that result in little more than subsidizing USSC's business, and in return will get only a small fraction of that back (approximately $6 million) in rent from USSC. Thus, the District is paying over seven times as much to finance the cash payment to USSC as USSC is paying in rent to retain control of what it sold. This differential accrues directly to USSC's bottom line as USSC avoids the financial cost of its vast landholdings, but gets to keep its land, all at public expense and at the expense of Everglades Restoration.

65. The District staff has admitted in public presentations to the Board that the USSC purchase debt, coupled with declining District revenues, made the prior Land-Only deal financially infeasible. Thus, the District cut the transaction into phases, but without the ability to fund the balance, cannot implement the projects it claims are the reason for the purchase.

66. Even the more limited transaction will strain the District's budget. The District intends to address this shortfall by cancelling or delaying Long-Term Plan projects. The District's failure to specify what projects or programs will be cut to pay for the Agency Action thwarts administrative and judicial review of the Agency Action prior to the closing and thus deprives affected parties of any meaningful remedy.

67. The District has attempted to justify the acquisition on the grounds that it is needed for Everglades restoration, and its executives have testified in related litigation that the purpose of the acquisition was to build reservoirs holding

approximately one million acre feet of water. Yet, the District has wholly failed to consider the cost of such a project and the fact that, after incurring the purchase debt associated with the Agency Action, it will have no financial ability to implement the stated public purpose for the transaction.

68. The District is expending nearly all its Everglades financial resources on this acquisition based on little more than a speculative hope that it can make use of some of the USSC lands. Yet, the District (i) has not yet defined any alternative projects to replace those being eliminated; (ii) has no defined plan for the use of the assets being acquired; (iii) has no financial ability to exercise the option to purchase the remaining lands, (iv) has no ability to secure the funding needed to build the new restoration projects it vaguely alludes to in its public presentations; and (v) even if it were to purchase the remaining USSC land would require substantial landholdings of New Hope to accomplish any reasonable alternative, but does not plan to negotiate any terms for such acquisition prior to closing with USSC.

69. No alternatives to the projects being shelved will be realized from the USSC acquisition for decades at best. Thus, compliance with current Everglades restoration mandates, including the Settlement Agreement, EFA and Phosphorus Rule, will be directly and adversely affected by the Agency Action.

70. The District also failed to account for the impacts from existing projects, including Long-Term Plan projects, being cancelled or delayed to pay for USSC land. Nothing sets out a plan for acquiring and financing the acquisition of the other land needed for the "restoration." And, there is nothing at all to indicate from whence the

many billions of dollars needed for the reservoirs and treatments areas that were the stated basis for the land acquisition would come. Nor is there any analysis of the implications of abandoning the federal-state Comprehensive Everglades Restoration Plan, giving up any federal funding while at the same time spending all the District's resources on the USSC acquisition.

71. Under the Agency Action, the District would indebt itself to a point where it cannot meet its commitments under state and federal law to achieve improvements in Everglades water quality, and misuse both *ad valorem* and EAA agricultural privilege taxes for a land acquisition with no defined purpose. At the end of the day, all the District would achieve is to grant a large public subsidy to USSC -- which will continue to operate its business after receiving over a billion dollars of public funds, action clearly beyond the District's statutory authority.

72. Finally, the District would acquire significant amounts of land that it cannot use in a flow way under any conceivable scenario, particularly since the USSC land is non-contiguous and spread throughout the EAA. The District has claimed that it will attempt to sell off unneeded lands, but this arbitrarily fails to note that under the current contract and preferential lease, USSC has encumbered the land such that the District cannot do anything other than facilitate USSC's continued farming, on preferential terms, at the public's expense.

D. The Agency Action is an Improper *De Facto* Abandonment of the Long-Term Plan.

73. The Long-Term Plan, also known as the "Everglades Protection Area Tributary Basins Conceptual Plan for Achieving Long-Term Water Quality Goals," is a

suite of projects and specific timetables to improve water quality and deliveries to the Everglades.

74. The Legislature in 2003 found the Long-Term Plan to be the best mechanism for addressing phosphorus levels in the Everglades and mandated its implementation. Implementation of the Long-Term Plan was Legislatively mandated by the EFA. *See, e.g.,* Fla. Stat. § 373.4592(3)(b).

75. As noted, the cost of the debt service to be incurred by the Agency Action would cause widespread cuts in current projects, and in particular, in the District's Long-Term Plan. While the District may wish it could forget its commitments, the Long-Term Plan is a key component in several federal and state mandates. Its implementation is required by the EFA. It is the Legislature's mandate for reducing phosphorus loads to the Everglades. And, it is a requirement in ACOs entered into between DEP and SFWMD in various permits. It cannot simply be ignored. Likewise the District has clear legal obligations to address growing nutrient problems in Lake Okeechobee, which are similarly impaired by the Agency Action.

76. As a direct result of the Agency Action, the District will, among other project cuts, cancel and/or delay projects set out in the District's Long-Term Plan. The Long-Term Plan is incorporated by reference in Rule 62-302.540, F.A.C. (the "Phosphorus Rule"), which mandates the plan's implementation, and constitutes a fundamental part of that regulation. The plan is used as, among other things, the definition of Best Available Phosphorus Reduction Technology (BAPRT), a fundamental

concept that ties into several key provisions of the Phosphorus Rule. *See* F.A.C. §§ 62-302.540(3)(a) and (b) and (6)(a).

77. Section 373.4592(3) of the EFA calls upon DEP and the District to implement BAPRT via the Long-Term Plan. BAPRT is intended to achieve "the most reliable means of optimizing the performance of STAs and achieving reasonable further progress in reducing phosphorus." Fla. Stat. § 373.4592(3)(b). The Legislature in amending the EFA in 2003 specifically found that the Long-Term Plan achieved this goal and mandated its implementation without delay. *Id.*

78. The Phosphorus Rule then incorporates the BAPRT concept at several points, including section (6)(a), set out below, with emphasis added:

> (6) Moderating Provisions. The following moderating provisions are established for discharges into or within the EPA as a part of state water quality standards applicable to the phosphorus criterion set forth in this rule:
>
> (a) Net Improvement in Impacted Areas.
>
> 1. Until December 31, 2016, discharges into or within the EPA shall be permitted using net improvement as a moderating provision upon a demonstration by the applicant that:
>
> a. The permittee will implement, or cause to be implemented, BAPRT, as defined by Section 373.4592(2)(a), F.S., and further provided in this section, which shall include a continued research and monitoring program designed to reduce outflow concentrations of phosphorus; and
>
> b. The discharge is into or within an impacted area.
>
> 2. BAPRT shall use an adaptive management approach based on the best available information and data to develop and implement incremental phosphorus reduction measures with the goal of achieving the phosphorus criterion. BAPRT shall also include projects and strategies to accelerate restoration of natural conditions with regard to populations of native flora or fauna.
>
> 3. For purposes of this rule, the Long-Term Plan shall constitute BAPRT. The planning goal of the Long-Term Plan is to achieve compliance with

> the criterion set forth in subsection (4) of this rule. Implementation of BAPRT will result in net improvement in impacted areas of the EPA. The Initial Phase of the Long-Term Plan shall be implemented through 2016. Revisions to the Long-Term Plan shall be incorporated through an adaptive management approach including a Process Development and Engineering component to identify and implement incremental optimization measures for further phosphorus reductions.

79. Thus, the Phosphorus Rule, which implements the EFA, specifically requires the District to "implement or cause to be implemented BAPRT." BAPRT is, in turn, defined as compliance with the Long-Term Plan. The District is therefore obligated by the Phosphorus Rule to implement the Long-Term Plan. Until amended or repealed an agency is bound by its own duly adopted rules.

80. A parallel requirement is found in DEP's ACOs approving discharge permits for waters entering the Everglades, which likewise require adherence to the Long-Term Plan as the compliance mechanism for achieving the water quality criterion for phosphorus in the Everglades Protection Area.

81. The debt used to finance the acquisition (the "Purchase Debt") will be approximately $43 million per year for the first stage alone. To use the USSC land the District will, however, need to undertake the second stage purchase which will cost 1.5 times as much as the initial stage acquisition. Were the District to attempt such a purchase with debt financing it would place the District above its current maximum debt service limit (the "Debt Cap"), as set out in the District's Debt Management Policy, Article IV, South Florida Water Management District Policies and Procedures. Thus, based on the District's own revenue projections the second $791 million plus purchase is not feasible, leaving the District with land that is insufficient for its stated purpose, in

the wrong location for that purpose and, in any event, is largely restricted under the Agreement to farming by USSC in return for rent that is a fraction of the associated public debt cost.

82. Upon closing of the first stage, the District would have incurred the Purchase Debt, transferred the proceeds to USSC and moved itself to very near its newly-raised 30 percent debt ceiling. The Purchase Debt will leave the District in a financial position where it will not be able to obtain the capital needed to complete all projects called for in the Long-Term Plan.

83. Upon closing, the District will have irrevocably departed from the current Long-Term Plan, having committed the funding to USSC. And, even if new replacement projects might eventually follow the acquisition of the USSC assets, there is no indication that the District has any sources for the capital or debt service revenue needed to implement such projects and replace the functions of the projects lost in the rush to make the USSC acquisition. Absent new revenues (none have been identified), the District will not be able to actually do anything with the land it acquires for the indefinite future.

84. Thus, the Agency Action derails current Long-Term Plan projects, and violates the statutory, regulatory, permit and judicial order requirements that the plan be implemented, in favor of future as yet unspecified replacement projects that may or may not constitute the best available means to reduce phosphorus, and may not even be financially feasible in light of the Purchase Debt.

E. The Deal Does Not Comply With the Statutory Requirements for Water Management District Land Acquisition.

85. The power vested in SFWMD to acquire land is not absolute and is limited to the lawful exercise of its discretion, which is subject to challenge by a substantially interested person such as New Hope. The Legislature has specifically declared that land management plan disputes are subject to chapter 120. *See* Fla. Stat. § 373.1391(1)(c).

86. Section 373.139, Florida Statutes, limits the District's power to acquire land and, among other things, allows land to be acquired only for "flood control, water storage, water management, conservation and protection of water resources, aquifer recharge, water resource and water supply development, and preservation of wetlands, streams, and lakes." Fla. Stat. § 373.139(2). None of these purposes are met by the USSC Purchase. The acquisition of property from a private party merely to be leased back to that same party for the indefinite future does not meet any public purpose, much less fall within the restrictive list of required uses under §373.139.

F. The Deal is Arbitrary and Capricious and Serves No Public Purpose.

87. The District's purchase of this land for purposes that it has no ability to effectuate and at the expense of current Everglades restoration projects is arbitrary and capricious. The only party that benefits is USSC, which continues to control its land for at least decades unless the District can raise nearly $800 million to purchase additional lands plus the billions needed to actually make use of that land. The District does not have the financial ability to take these next steps, which are necessary for its stated

public purpose to be made a reality. Thus any claim of public use of the land is dubious, speculative and remote. Purchasing land and indebting the public for projects an agency knows it has no ability to undertake is an arbitrary and capricious and therefore invalid agency action.

88. Once the purchase price is paid to USSC, the District will have irrevocably committed itself to abandoning the projects in the Long-Term Plan. By replacing projects set forth in the Long-Term Plan in favor of the non-project USSC purchase, the District has adopted a proposed Agency Action that is contrary to the Long-Term Plan, BAPRT, the Phosphorus Rule, and the water quality of the Everglades and the Lake. To date, the District has not proposed any alternative projects to replace those that will be cancelled or delayed, has not indicated where the funding for any such alternatives would come from, and has not shown that a modified long-term plan after the USSC acquisition will be the "best available phosphorus reduction technology" as the Legislature found was the case with the current, now largely abandoned Long-Term Plan.

89. The delay caused by the Agency Action will add years or decades to the compliance period for the Everglades phosphorus criterion (Fla. Admin Code R. 62-302.540). If it is the District's intent to use this new land for projects to replace the current Long-Term Plan, the preferential lease and the impact of the Purchase Debt will add a decade or more to the time needed to move toward water quality compliance. No meaningful evaluation of the effects of this delay has been undertaken by the District. Upon information and belief, as part of a concerted effort to thwart and evade

review, the District delayed any such analysis until after its Governing Board approved the Agency Action.

90. Because of the District's lack of analysis of the critical issues discussed above, the Agency Action is arbitrary and capricious.

91. Upon information and belief, other legislatively-mandated projects will also be affected and either cut or delayed as a result of the Agency Action, including, *inter alia*, the projects needed for the Lake Okeechobee Protection Program. Failure to timely complete such projects could place the District in violation of the Northern Everglades and Estuaries Protection Program, section 373.4595, Florida Statutes. These statutory violations independently render the Agency Action invalid, and the failure to properly analyze the impact on, *inter alia*, Everglades and Lake water quality compliance renders the Agency Action arbitrary and capricious.

GOVERNING RULES AND STATUTES

92. For the reasons set forth in this Petition, the specific statutes and regulations requiring that the Agency Action be declared invalid include sections 120.569, 120.57, 373.089, 373.093, 373.139, 373.1391, 373.4592, and 373.4595, Florida Statutes, and chapters 40E-61, 40E-63, 62-302 and 28-106, Florida Administrative Code.

RELIEF SOUGHT

The ultimate relief sought by Petitioners is an administrative determination that the Agency Action is invalid for the reasons set forth above.

WHEREFORE, Petitioners request that:

1. The South Florida Water Management District determine that this Petition contains all of the information set forth in section 120.54(5)(b), Florida Statutes, and is substantially in compliance therewith;

2. The Petition be referred to the Division of Administrative Hearings (DOAH) for the assignment of an Administrative Law Judge for the conduct of a formal administrative hearing on the merits;

3. A Recommended Order and Final Order be entered declaring the Agency Action invalid; and

4. Such other relief as may be warranted.

Dated: June 3, 2009

Respectfully submitted,

Diane D. Tremor
Chris H. Bentley
ROSE SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555
dtremor@rsbattorneys.com

- and -

Joseph P. Klock, Jr., Esq. FBN 156678
Gabriel E. Nieto, P.A. FBN 147559
JuanCarlos Antorcha, P.A. FBN
RASCO KLOCK REININGER
PEREZ ESQUENAZI VIGIL & NIETO
283 Catalonia Avenue
Coral Gables FL 33134
305 476.7111
305.476.7102 Facsimile
jklock@rascoklock.com
gnieto@rascoklock.com

By:_____
Joseph P. Klock, Jr.

AMENDED AND RESTATED AGREEMENT FOR SALE AND PURCHASE

THIS AMENDED AND RESTATED AGREEMENT FOR SALE AND PURCHASE (this "Agreement") is made as of May 13, 2009, by and among **UNITED STATES SUGAR CORPORATION**, a Delaware corporation ("Parent"), **SBG FARMS, INC.**, a Florida corporation ("SBG") and **SOUTHERN GARDENS GROVES CORPORATION**, a Florida corporation ("SGGC") (collectively, "Selling Subsidiaries" and, together with Parent, individually and collectively, the "SELLER"), and the **SOUTH FLORIDA WATER MANAGEMENT DISTRICT**, a public corporation created under Chapter 373 of the Florida Statutes, as BUYER (together with its successors and assigns, "BUYER"). BUYER and each SELLER are referred to herein individually as a "Party" and collectively as the "Parties." Each of the Parent and BUYER shall furnish to the other an original of this Agreement executed on its behalf promptly after execution.

For and in consideration of mutual covenants set forth herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and in further consideration of the terms and conditions hereinafter set forth, the parties hereto, intending to be legally bound, agree as follows:

1. AGREEMENT TO SELL AND BUY

a. SELLER and BUYER have previously entered into an Agreement for Sale and Purchase dated December 29, 2008, as amended by that certain First Amendment to Agreement for Purchase and Sale dated January 15, 2009, that certain Second Amendment to Agreement for Purchase and Sale dated February 12, 2009 and that certain Third Amendment to Agreement for Purchase and Sale dated March 12, 2009 (collectively, the "Original Agreement") for approximately 180,000 acres. In connection therewith, SELLER and BUYER have now agreed to amend and restate the Original Agreement to provide, among other things, that SELLER shall sell and BUYER shall purchase approximately 72,813 acres on the Closing Date and BUYER shall thereafter have an option to purchase the remaining approximately 107,817 acres in accordance with the provisions hereof. Accordingly, by execution of this Agreement, the Original Agreement shall be deemed to be completely amended, restated, replaced and superseded by the terms of this Agreement.

b. The SELLER hereby agrees to sell to the BUYER and the BUYER hereby agrees to buy from the SELLER, subject to the terms and conditions hereinafter set forth, that certain real property located in Hendry, Glades, and Palm Beach Counties, Florida (collectively, the "Counties"), legally described in **Exhibit "A"** attached hereto and made a part hereof; it being understood that the parties anticipate that the total acreage of the Premises shall be approximately seventy-two thousand eight hundred thirteen (72,813) acres, together with all and singular the rights, tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining (hereinafter referred to as the "Premises"); it being agreed

that in no event shall the Premises include any unharvested citrus and planted sugar cane crops, which Seller shall retain subject to the terms of the Lease (provided that pursuant to the Lease any cane stubble existing at the end of the Lease term shall belong to BUYER). Subject to the Title Exceptions, the conveyance of the Premises will include, without limitation, all citrus groves, fixtures, buildings, structures, improvements, pumps, pump motors, pump stations, culverts, ditches, canals, levees, roads, bridges, and all other irrigation and drainage works and infrastructure located on the Premises and any and all other right, title and interest in and to the Premises, including but not limited to all logs and timber rights, all water rights, all mineral rights, all oil and gas rights, all pasturage rights, all grazing rights and all other rights connected with the beneficial use and enjoyment of the Premises; as well as all right, title and interest in all alleys, roads, streets, streams, canals, ditches and other water bodies located on the Premises, appurtenant to the Premises or which may provide access to the Premises; and all right, title and interest in any alleys, roads, streets and easements included within the Premises, appurtenant to the Premises or which may provide access to the Premises.

c. Notwithstanding anything in this Agreement to the contrary, but subject to the express conditions of this Agreement, in no event shall any of SELLER's or BUYER's rights or obligations hereunder be deemed to be conditioned upon BUYER entering into any third party agreements including, without limitation, real property swaps, asset purchases or sales, or real property purchases or sales.

d. Should BUYER determine before or after Closing that minor adjustments to the relative boundaries of the Premises and SELLER's retained lands (but only to the extent that SELLER then owns such lands) would advance BUYER's purposes for the Premises, SELLER and BUYER agree to mutually and reasonably cooperate to consider whether a mutually agreeable land swap can be implemented, without additional consideration, to accomplish such objective, it being agreed that if either Party determines that such swap cannot be accomplished on terms and conditions acceptable thereto, then such Party may elect to not enter into such land swap without any further obligation or liability.

2. PURCHASE PRICE

The purchase price for the Premises is **FIVE HUNDRED THIRTY-SIX MILLION FOUR HUNDRED EIGHTY-SIX THOUSAND ONE HUNDRED EIGHTY AND No/100 U.S. Dollars ($536,486,180)** (the "Purchase Price") payable at time of Closing by a wire transfer in immediately available funds from BUYER to Title Company ("Closing Agent"), to be disbursed by the Closing Agent by wire transfer in immediately available funds to SELLER at Closing, subject only to the prorations and adjustments as otherwise provided in this Agreement. The Purchase Price is subject to adjustment based upon $7,368.00 per acre multiplied by the actual amount of acres reflected on the Surveys (as defined in Section 5).

3. TIME FOR ACCEPTANCE

This Agreement shall not be effective unless it is executed and delivered by the SELLER to the BUYER on or before May 12, 2009, and is executed by the BUYER on or before May 14, 2009. Notwithstanding the foregoing, in the event this Agreement is executed by the SELLER and delivered to the BUYER after May 12, 2009, BUYER, in BUYER's sole and absolute discretion, may extend said date until the date the BUYER actually receives this Agreement fully executed by the SELLER. The effective date of this Agreement ("Effective Date"), for purposes of performance, shall be regarded as the date when the BUYER has signed this Agreement. Acceptance and execution of this Agreement shall void any prior contracts or agreements between the parties concerning the Premises unless incorporated by reference herein.

4. CLOSING DATE

Subject to the terms and conditions of this Agreement, unless this Agreement shall have been earlier terminated in accordance with its terms, the consummation of the sale and purchase of the Premises (the "Closing") shall occur (a) on or before ninety (90) days after the later to occur of: (i) Validation, or (ii) the expiration of the Solicitation Period (as defined in Section 25 below), at the offices of SELLER's counsel in West Palm Beach, Florida, or (b) at such other time, place and manner (including via facsimile or electronic transmission) as may be mutually agreed to in writing (without any obligation to do so) by the Parties hereto (such time and date on which the Closing occurs being referred to herein as the "Closing Time" and the "Closing Date", respectively). Notwithstanding the foregoing, either SELLER or BUYER may terminate this Agreement by written notice to the other if Validation has not been issued by March 31, 2010 ("Outside Date").

5. EVIDENCE OF TITLE

a. Survey. As of the Effective Date, SELLER, at BUYER's request, has caused surveys of lands to be prepared which include, among other lands, all of the Premises (each, a "Prior Survey" and collectively, the "Prior Surveys"). BUYER agrees that it shall reimburse SELLER in the amount of $5,775,000 in connection with the preparation of the Prior Surveys within forty-five (45) days after the Effective Date (it being understood that this obligation shall survive any termination of this Agreement). Any additional cost or expense of the Prior Surveys in excess of $5,775,000 shall be borne by SELLER. BUYER, at BUYER's sole cost and expense, shall directly contract for and shall cause the Premises to be separately surveyed, which separate surveys (each, a "Survey" and collectively, the "Surveys") shall: (i) be made by a duly licensed Florida surveyor; (ii) be prepared in accordance with the minimum technical standards set forth by the Florida Board of Land Surveyors pursuant to Section 472.027, Florida Statutes, and Chapter 61G17, Florida Administrative Code and those certain requirements set forth in Schedule 5.a. unless otherwise agreed to by BUYER; (iii) not be required to reflect improvements located within the boundaries of the Premises, except as may otherwise be required by Schedule 5.a.; (iv) contain a legal description of the Premises (or applicable portion

thereof); and (v) contain a certificate in favor of SELLER, SELLER's counsel, BUYER, BUYER's counsel, the Title Company (as defined herein), the Title Agent (as defined herein), the corporate trustee issuing the Certificates of Participation, any credit enhancer securing the Certificates of Participation and other Persons as reasonably designated by BUYER. Upon receipt of any Survey by BUYER, BUYER shall promptly deliver certified copies of the same to SELLER, in the number of copies reasonably requested by SELLER at BUYER's expense. BUYER shall provide SELLER with written notice of any objections to the Surveys (the "Survey Objections") within thirty (30) days after receipt of the same, it being agreed that BUYER shall deemed to have accepted the matters disclosed in the Surveys to the extent BUYER does not timely provide notice of such Survey Objections within such 30-day period. From and after the Effective Date, BUYER shall approve in writing the scope of work, including the cost thereof, for the Surveys, and upon such approval, BUYER will direct the surveyors to prepare the Surveys in accordance with a contract directly between BUYER and the surveyors. BUYER shall pay the costs of such Surveys no more frequently than monthly within thirty (30) days after receipt of invoices thereof (it being understood that this obligation shall survive any termination of this Agreement). Prior to Closing, BUYER, at BUYER's sole cost and expense, may request updates of the Survey from time to time (the "Survey Updates").

b. Title Binder. SELLER has received Chicago Title Insurance Company ("Title Company"), Commitment Report No. 300804668 (Draft No. 3) dated June 30, 2008 as to lands in Glades County, June 19, 2008 as to lands in Hendry County and July 3, 2008 as to lands in Palm Beach County which included the Premises (collectively, the "Original Commitment"), together with copies of the exceptions set forth therein. The Original Commitment is acceptable to and approved by BUYER subject to the objections raised in BUYER's letter to SELLER dated February 6, 2009, except for objections to Nos. 16, 68, 191, 194X, 194Y, 194Z, 194AA, 267, 287A, 288 and 494 (solely to the extent that such title exception encumbers the Premises) of Schedule B-II of the Original Commitment and the objection to oil, gas and mineral reservations set forth in Paragraph No. 24 of such letter (solely to the extent that such title exceptions encumber the Premises), which objections BUYER hereby waives (the objections set forth in such letter that are not waived as set forth above and which relate to the Premises are herein called the "Title Objections"). SELLER shall have thirty (30) days after the Effective Date to cause the Title Company to issue and deliver to BUYER a title binder or binders for the Premises with legible copies of the deeds vesting title in, and conveying title from, SELLER and all instruments affecting title attached thereto (collectively, "Title Binder"), committing the Title Company to issue in BUYER's favor an ALTA title insurance policy or policies insuring BUYER's interest in the Premises (collectively, the "Title Policy") in the amount of the Purchase Price (it being agreed that separate policies may be issued for each portion(s) of the Premises that are owned by each of Parent and its Selling Subsidiaries so long as the aggregate amount of the title insurance is equal to 100% of the Purchase Price).

BUYER shall provide SELLER with written notice of any objections to the Title Binder within thirty (30) days after receipt of the same, it being agreed that (A) BUYER may only object to matters in the Title Binder that have not already been approved or deemed approved by BUYER in the Original Commitment or the Survey (i.e., matters other than the Title Objections or Survey Objections) and (B) BUYER shall be deemed to have accepted the matters disclosed in the Title Binder to the extent BUYER does not timely provide notice of the such objections within such 30-day period (any such timely written objections to the Title Binder are herein called the "Additional Title Objections"). Prior to Closing, BUYER may request updates of the Title Binder from time to time (the "Title Updates"). BUYER shall provide SELLER with written notice of any objections to the Title Updates or Survey Updates within thirty (30) days after receipt of the same, it being agreed that (A) BUYER may only object to matters that have not already been approved or deemed approved by BUYER in the Original Commitment, the Title Binder or the Survey or any prior Title Updates or Survey Updates and (B) BUYER shall be deemed to have accepted the matters disclosed in the Title Updates or Survey Updates to the extent BUYER does not timely provide notice of the such objections within such 30-day period (the Survey Objections, Title Objections, Additional Title Objections and any timely objections to Survey Updates and Title Updates as provided above are collectively referred to herein as the "Objections"). The amounts of re-insurance obtained by the Title Company and the title companies providing such re-insurance shall be reasonably acceptable to the Parties. Assuming that BUYER does not terminate this Agreement pursuant to **Section 7.a.xvi**, then, at the Closing, BUYER shall accept title to the Premises and the Title Policy, subject to the following (collectively, "Title Exceptions"):

i. Real property taxes, assessments and special district levies that are not yet due and payable, for the year in which the Closing occurs, and for subsequent years; and

ii. All of those certain matters set forth on Schedule B-II to the Title Binder and any updates thereof and any matters that may be shown by the Survey, in each case, as of the Closing Date, subject to SELLER's obligation to cure Curable Title Defects, if any, as defined in and pursuant to Section 5.c. below.

c. Owner's Affidavit, Curable Title Defects. SELLER shall: (i) deliver to the Title Company the Owner's Affidavit at Closing, together with any other customary resolutions that may be required by the Title Company to evidence the corporate authority of each SELLER to enter into this transaction and convey its respective rights, title, and interests in and to the Premises to BUYER; and (ii) be absolutely obligated to satisfy, discharge or release of record or insure over at Closing (A) any and all mortgages, consensual liens (i.e., signed by the appropriate SELLER),

construction liens filed under Chapter 713, F.S., Notices of Commencement (as defined in Section 713.01(22), Florida Statutes) and final and unappealable liquidated judgments as to which a SELLER has been duly served (i.e., not a default judgment without notice), all regardless of amount, which encumber the Premises, (B) any liquidated default judgments and other liens as to which the fixed amount to discharge the same can be ascertained from the face of the lien instrument, all up to an aggregate amount of ONE MILLION TWO HUNDRED THOUSAND AND NO/100 U.S. DOLLARS ($1,200,000.00) (collectively, the "Curable Title Defects"), in each case, without any obligation to commence any action or proceeding in connection therewith. Other than the Curable Title Defects, in no event shall SELLER be deemed to have any obligation to cure any other title or survey matters (including the Objections that are not otherwise expressly referenced in clauses (i) and (ii) above); provided, however that prior to or at Closing, SELLER shall, at its sole cost and expense, satisfy, solely to the extent that the same are included in the Title Binder, Items Nos. 1(a), 2 (solely with respect to mortgagors), 3, 4, 5, 6, 7, 8, 10 and 12 set forth in Chicago Title Insurance Company Commitment Report No. 300804668 (Draft No. 2) dated September 17, 2008, and Item No. 14 in Endorsement No. 2 to Commitment Report No. 300804668 (Draft No. 2) issued by the Title Company dated October 14, 2008, solely as the same relate to the Counties within which the Premises are located and not any other counties (e.g., SELLER may obtain a partial release of mortgage(s) to release the Premises from any such mortgages but not release the portion of any property not being conveyed by SELLER to BUYER).

d. Title Agent. All title insurance shall be issued by an authorized agent ("Title Agent") for the Title Company, and both SELLER and BUYER hereby waive any conflict which may exist by virtue of the Title Agent also serving as legal counsel to SELLER.

e. Encumbrances arising from and after the date of this Agreement. From and after the Effective Date, SELLER shall not execute or record any agreement or instrument in any way affecting the title to the Premises or grant, convey, encumber, lease (except as otherwise provided in Section 12.a.xvii) or consent to the imposition of any additional lien on any portion of the Premises without BUYER's prior written consent; provided, however, that BUYER shall not have any right to object to SELLER's recording of any instruments, for corrective title instruments or in connection with any financings or refinancings permitted by the terms of this Agreement.

f. Removal of Portions of the Premises. Prior to Closing, BUYER has the right to unilaterally elect to remove any portion of the Premises that is subject to any title or survey matters objectionable to BUYER so long as there is no reduction in the Purchase Price. BUYER and SELLER may mutually agree, each in their sole and absolute discretion without any obligation to do so, as to any removal of any portion of the Premises that is subject to any title or survey matters objectionable to BUYER as to which BUYER is requesting a reduction in the Purchase Price;

provided that if the Parties cannot agree, each in their sole and absolute discretion, then BUYER's sole remedies shall be (x) to terminate this Agreement pursuant to Section 7.a.xvi , or (y) to remove the portion of the Premises without a reduction in Purchase Price. Notwithstanding the foregoing, BUYER shall have the right to exclude from the Premises up to One Hundred Twenty (120) acres of land that is uninsurable (without additional cost to BUYER, unless SELLER elects to pay such additional insurance costs) or contains obligations that are prohibited by law as applied to BUYER, in which event BUYER and SELLER shall automatically adjust the Purchase Price by an amount equal to the aggregate sum of the value for each such acre excluded (based upon the applicable value(s) set forth in Schedule 5.f attached hereto). In the event that any portion of the Premises is removed from the Premises as permitted under this Section 5.f., (i) BUYER shall provide access and utility (including drainage) easements to SELLER, in form and substance (including rights of relocation) reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for SELLER to continue to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from such property, together with any applicable utility service, and (ii) SELLER shall provide access and utility (including drainage) easements to BUYER or a third party to whom BUYER has sold a portion of the Premises, in form and substance reasonably acceptable to SELLER and BUYER, if such easements are necessary in order for BUYER or such third party to have legal and physical access and to preserve existing drainage (to the extent practicable over existing roads and drainage areas) to and from the Premises (or affected portion thereof), together with any applicable utility service.

g. Title and Survey Costs. SELLER shall pay: (i) any and all costs (including search charges and premiums) required for the issuance of the Title Binder and continuations and extensions thereof (including any and all updates thereof) and the Title Policy, other than any costs for the issuance of any endorsements; and (ii) the costs of the Prior Surveys to the extent they exceed $5,775,000. BUYER shall pay: (a) any costs for the issuance of any desired or applicable endorsements to the Title Policy; (b) $5,775,000 to SELLER in reimbursement of the costs of the Prior Surveys within forty-five (45) days after the Effective Date; and (c) the costs of the Surveys and any Survey Updates.

h. Title Insurance Policy. SELLER shall request the Title Company to issue a Title Binder that commits to issue a "Formerly American Land Title Association Owner's Policy Form B-1970 (Revised 10-17-70 and 10-17-84)" without creditor's rights exceptions (the "1970 Policy"). SELLER and BUYER shall provide any reasonable documentation in their respective possession requested by the Title Company in connection with the issuance of such 1970 Policy, provided that SELLER shall have no obligation to deliver such 1970 Policy.

i. Quit-Claim Deeds. SELLER agrees, at any time after Closing upon written request of BUYER, to execute any corrective quit-claim deeds that may be

necessary to effectuate this transaction, including the conveyance of strips, gaps and gores. This Section 5.i. shall survive Closing.

6. SELLER'S DELIVERIES

a. SELLER shall make available to BUYER, to the extent in SELLER's possession or reasonable control, the following documents and instruments related to the Premises within ten (10) days after written request of BUYER, except as specifically indicated:

i. Copies of any reports or studies (including engineering, environmental, soil borings, and other physical inspection reports) with respect to the physical condition or operation of the Premises, if any.

ii. Copies of all licenses, variances, waivers, permits (including but not limited to all surface water management permits, wetland resource permits, consumptive use permits and environmental resource permits issued by the BUYER), authorizations, and approvals required by law or by any governmental or private authority having jurisdiction over the Premises, or any portion thereof (the "Governmental Approvals"), as well as copies of all unrecorded instruments which are material to the use or operation of the Premises, if any.

iii. Copies of all contracts, agreements, insurance policies and all other information to the extent related to the Premises and reasonably needed by BUYER to evaluate this transaction.

iv. Copies of reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage, in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by BUYER, subject to the trade secret protocol established by SELLER.

With respect to any such information made available to BUYER pursuant to this Section 6.a. that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), BUYER shall follow the trade secret protocol established by SELLER attached hereto as Schedule 6.a.).

b. Notwithstanding the foregoing, in no event shall SELLER be obligated to provide any (i) financial or accounting information (e.g., pro-formas, tax returns, production reports, financial statements, appraisals, etc), other than reports listed in subsection (a)(iv) above; (ii) confidential information (i.e., subject to a confidentiality agreement with another party); (iii) information that is proprietary (except for the information described in Paragraph 6.a. above); or (iv)

information that pertains to SELLER's business operations or assets other than the Premises.

c. As of or promptly after the Closing Date, to the extent transferable, SELLER and BUYER shall take such actions as are necessary to modify or transfer all of the Governmental Approvals of each SELLER relating to the Premises in accordance with Exhibit 6.c attached hereto (inclusive of any related land owner agreements), subject to the right of SELLER to continue its agricultural operations on the Premises pursuant to the Lease and to continue SELLER's agricultural operations on any other real property leased by SELLER, it being agreed that BUYER and SELLER shall mutually and reasonably cooperate to ensure that SELLER continues to receive the legal rights and entitlements afforded under the Governmental Approvals for such operations. In addition, to the extent permitted by applicable law, BUYER shall be listed as owner and SELLER shall be listed as an operator and/or joint permittee under any Governmental Approvals during the term of the Lease; provided, however, nothing in this subparagraph c. shall be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued or to obligate BUYER to issue any Governmental Approvals or to obligate BUYER, as purchaser under this Agreement, to take any action that conflicts with the enforcement obligations of the relevant regulatory agencies. This Section shall survive Closing.

d. BUYER shall (and BUYER shall cause BUYER's Representatives) to keep any and all written or verbal information provided by SELLER or SELLER's Representatives, or otherwise obtained by BUYER, either prior to or after the Effective Date, with respect to the Premises or the transactions contemplated hereby, in strict confidence in accordance with the terms and conditions of that certain Confidentiality Letter dated July 5, 2008 between Parent and BUYER, a copy of which is attached hereto as Schedule 6.d. "BUYER's Representatives" means any and all of BUYER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by BUYER in connection with the acquisition of the Premises, and investment bankers and underwriters engaged by BUYER to structure and issue the Certificates of Participation or the refinancing of the Certificates of Participation. "SELLER's Representatives" means any and all of SELLER's directors, officers, officials and employees, legal counsel, consultants, contractors, agents or other representatives engaged by SELLER in connection with the conveyance of the Premises.

7. ADDITIONAL CONDITIONS PRECEDENT TO CLOSING

a. In addition to all other conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in this Agreement, the following shall be additional conditions precedent to BUYER's obligation to consummate the purchase and sale contemplated herein:

i. The physical condition of the Premises shall be in all material respects the same on the date of Closing as on the Effective Date of this Agreement, reasonable wear and tear excepted.

ii. At Closing, there shall be no litigation or administrative agency or other governmental proceeding of any kind whatsoever, pending or threatened which after Closing would, materially adversely affect the value of the Premises.

iii. On the day of Closing, the Premises shall be in material compliance with all applicable federal, state and local laws, ordinances, statutes, rules, regulations, codes, requirements, licenses, permits and authorizations.

iv. Validation and Certificates of Participation. The Validation shall have occurred and the Certificates of Participation shall have been issued and delivered with an average rate of interest not to exceed 7.5% and a final maturity (assuming substantially level debt service) of 30 years and in a par amount sufficient to generate proceeds to pay the Purchase Price and Close, and otherwise upon terms and conditions which are substantially similar to those terms and conditions of the prior issuance of certificates of participation by BUYER as more particularly described on Schedule 7.a.iv and otherwise materially consistent with and not in conflict with the laws of the State of Florida and BUYER's policies and procedures relating to financing, BUYER's financial plan and projections and BUYER's capital expense programs. For purposes of this Agreement, "Validation" means a final judgment shall have been issued by the Circuit Court in and for Palm Beach County validating the Certificates of Participation pursuant to Chapter 75, Florida Statutes and either (i) no timely appeal has been taken and the time for taking such appeal has expired or (ii) in the event of an appeal, such final judgment shall have been affirmed by the Florida Supreme Court and shall have become final and not subject to re-hearing or further appeal. "Certificates of Participation" are defined as certificates of participation evidencing undivided proportionate interests of the owners thereof in basic lease payments to be made by the Governing Board of BUYER, as lessee, pursuant to a Master Lease Purchase Agreement with the Leasing Corp., as lessor, in an aggregate amount, that, when combined with any other funds to be paid by BUYER at Closing, shall equal the Purchase Price.

v. BUYER's lender/financing trustee/credit enhancer/underwriter (the "Credit Provider") shall have approved the form of the Lease.

vi. All of the representations and warranties of SELLER contained in this Agreement, including but not limited to those contained in Paragraph 12, shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any

representation or warranty that is already qualified to a materiality standard).

vii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.

viii. Intentionally Deleted.

ix. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.

x. SELLER shall have funded the General Escrow Fund pursuant to the General Escrow Agreement, which shall be in form and substance attached hereto as **Exhibit 7.a.x** ("General Escrow Agreement").

xi. Performance. Each of the covenants, obligations and agreements to be performed by each of SELLER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).

xii. Closing Deliveries. SELLER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in Section 11 that are to be delivered by SELLER or such other applicable party, each dated as of the Closing Date.

xiii. Board Resolutions; Incumbency Certificates. BUYER shall have received from each SELLER copies of (a) within forty-five (45) days after Validation, resolutions of (i) the Board of Directors (or comparable authoritative body) of such SELLER, and (ii) solely if SELLER determines that it will seek stockholder approval, the stockholders of such SELLER, authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of each SELLER, and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in Section 7.a.xi. have been satisfied.

xiv. Legal Opinion. BUYER shall have received a legal opinion regarding the authority of SELLER to enter into this Agreement from SELLER's counsel in the form of Exhibit 7.a.xiv.

xv. The Parties hereto acknowledge that, concurrently with the Closing, BUYER intends to enter into a ground lease agreement with the South Florida Water Management District Leasing Corp. (the "Leasing Corp.") which will encumber BUYER's interest in the Premises in order to facilitate the issuance of the Certificates of Participation. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver a Non-Disturbance, Subordination and Attornment Agreement in form and substance reasonably acceptable to all of such parties (the "NDSA").

xvi. BUYER shall be satisfied in its sole and absolute discretion: (x) that the 1970 Policy has been issued; (y) that the Objections have been resolved; and (z) with any new matters set forth in any Title Updates or Survey Updates that have not already been approved or deemed approved by BUYER (i.e., matters other than the Objections).

xvii. The Closing Affidavit, if any, delivered by SELLER to BUYER pursuant to Section 12.a.xvi. shall be satisfactory to BUYER.

xviii. BUYER is satisfied that no events have occurred since the Effective Date, and no conditions existed as of the Effective Date which were unknown to BUYER, that would cause the amount of debt and debt service necessary to finance this transaction to adversely affect the financial capacity of BUYER to continue to fulfill its statutory, contractual and other legal obligations and mandates based on its historical and projected operations.

xix. The easements have been mutually agreed upon by the Parties pursuant to Section 11.a.xii.

xx. The Relocation Agreement has been mutually agreed upon by the parties thereto pursuant to Section 19.j.

b. Should any of the conditions precedent to Closing provided in Section 7.a. above fail to occur, then BUYER shall have the right, in BUYER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in Section 15 of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.

c. In addition to all other conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein or provided elsewhere in

this Agreement, the following shall be additional conditions precedent to SELLER's obligation to consummate the purchase and sale contemplated herein:

i. All of the representations and warranties of BUYER contained in this Agreement, including but not limited to those contained in Section 12 (but excluding BUYER's representation in Section 12.c.vi), shall be true and correct in all material respects as of Closing (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).

ii. The conveyance contemplated by this Agreement is not in violation of, or prohibited by, any private restriction, governmental law, ordinances, statute, rule or regulation, including but not limited to applicable governmental subdivision or platting ordinances.

iii. There are no judicial, administrative or other legal or governmental proceedings, including but not limited to proceedings pursuant to Chapter 120, Florida Statutes, filed or pending with respect to, or which affect, this Agreement or the transaction which is the subject of this Agreement.

iv. Performance. Each of the covenants, obligations and agreements to be performed by BUYER on or prior to the Closing Date pursuant to the terms of this Agreement shall have been duly and fully performed in all material respects (provided, however, that the foregoing materiality standard shall not apply to any covenant, obligation or agreement that is already qualified to a materiality standard).

v. Closing Deliveries. BUYER or such other applicable party shall have executed and delivered to Closing Agent the documents specified in Section 11 that are to be delivered by BUYER or such other applicable party, each dated as of the Closing Date.

vi. Board Resolutions; Incumbency Certificates. SELLER shall have received from BUYER copies of (a) the resolution of the Governing Board of BUYER authorizing the execution and delivery of this Agreement and the Related Agreements and the consummation of the transactions contemplated hereby and thereby, certified by the appropriate officer of BUYER (the "BUYER's Approval"), and (b) a certificate as to incumbency and signatures of officers authorized to execute this Agreement and the Related Agreements, and (c) a certificate dated as of the Closing Date and validly executed by an appropriate officer certifying that the conditions specified in Section 7.c.iv. have been satisfied.

vii. At Closing, SELLER, BUYER, the Leasing Corp. and any lender/financing trustee that may have received an assignment of the

Leasing Corp.'s or BUYER's leasehold interest in the Premises, shall execute and deliver the NDSA.

viii. On or before forty-five (45) days after Validation, (A) the Boards of Directors for PARENT and each SELLING SUBSIDIARY shall have each (i) declared the transaction contemplated by this Agreement to be fair, advisable and in the best interests of its respective stockholders, and (ii) solely if SELLER determines that it will seek stockholder approval, recommended that their respective stockholders adopt this Agreement, presented this Agreement to their respective stockholders for approval, and, subject to stockholder approval, approved the consummation and performance of the transactions contemplated by this Agreement, and (B) solely if SELLER determines that it will seek stockholder approval, the stockholders of PARENT and each SELLING SUBSIDIARY shall have adopted this Agreement and approved the consummation of the transactions contemplated by this Agreement, in the case of both (A) and (B) above, in accordance with the applicable certificate or articles of incorporation and by-laws and applicable Law (collectively, the "SELLER's Approvals").

ix. BUYER's Credit Provider shall have approved the form of the Lease.

x. The easements have been mutually agreed upon by the Parties pursuant to **Section 11.a.xii.**

xi. The Relocation Agreement has been mutually agreed upon by the parties thereto pursuant to **Section 19.i**.

d. Should any of the conditions precedent to Closing provided in Section 7.c. above fail to occur, then SELLER shall have the right, in SELLER's sole and absolute discretion, to terminate this Agreement upon which, except as otherwise provided in **Section 15** of this Agreement, both Parties shall be released of all obligations under this Agreement with respect to each other.

8. PRORATIONS, TAXES AND ASSESSMENTS

SELLER shall pay when due all real property taxes, (whether ad valorem or non-ad valorem) as well as all pending, certified, confirmed and ratified special assessment liens levied against the Premises through the Closing Date. From and after the Closing Date, the Lease provides that the tenant thereunder shall pay all real property taxes (whether ad valorem or non-ad valorem) accrued with respect to the Premises in accordance with Florida Statute 196.295.

9. CONVEYANCE

SELLER shall convey title to the Premises to the BUYER, by statutory warranty deed(s)

("Deed(s)") at Closing, in form and substance attached hereto as Exhibit 9.

10. OWNERS AFFIDAVIT/CONSTRUCTION LIENS; ENVIRONMENTAL ESCROW

a. At Closing, the SELLER shall furnish to the BUYER an Owner's Affidavit ("Owner's Affidavit"), in form and substance as attached hereto as Exhibit 10.a.

b. General Escrow Fund.

i. Provided that SELLER does not elect to fund the following escrow amounts with a General Letter of Credit as provided below, the Closing Agent shall hold in escrow (if Closing Agent is also the Escrow Agent) or deliver to Escrow Agent (if Escrow Agent is not the Closing Agent) the following amount at Closing (which shall be paid out of the Purchase Price): cash in an amount equal to FOUR MILLION AND NO/100 DOLLARS ($4,000,000.00) (the "General Escrow Fund"), which General Escrow Fund, if cash, shall be paid by wire transfer of immediately available funds to an interest bearing account designated by an Escrow Agent. The General Escrow Fund shall not be used for any purposes other than those set forth in Section 10.b.ii.

ii. The General Escrow Fund shall be held as security for: (w) any Environmental Claims that BUYER may have under this Agreement; (x) costs incurred by SELLER to perform Additional Remediation pursuant to Section 21; (y) payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate to BUYER pursuant to Section 21; and (z) satisfaction of all of SELLER's obligations as provided under the Lease (without limiting BUYER's other rights and remedies under this Agreement or the Lease). The General Escrow Fund shall be disbursed in accordance with the General Escrow Agreement. In addition, the General Escrow Fund shall be security for costs incurred by BUYER to complete Additional Remediation begun by SELLER, but which has not been timely completed by SELLER pursuant to Section 21, if SELLER has not met a Milestone in the Additional Remediation Schedule as a result of its failure to diligently pursue same.

iii. In the event that SELLER elects to fund all of the General Escrow Fund with a General Letter of Credit, as provided for below, then the cash to Close payable directly to SELLER shall be increased by the aggregate amount of any such General Letter of Credit.

iv. In lieu of cash proceeds from the Purchase Price being deposited as General Escrow Fund on the Closing Date, SELLER shall have the option (to be exercised no later than ten (10) days prior to Closing), to elect to post a letter of credit with Escrow Agent for all the General Escrow Fund

(the "General Letter of Credit"), which shall be held and drawn upon by Escrow Agent pursuant to the terms of the General Escrow Agreement and shall be substantially in the form attached hereto as **Exhibit 10.c.iv.** or otherwise in form and substance reasonably acceptable to SELLER and BUYER. The General Letter of Credit shall not be assignable or transferable to any transferees, successors or assigns of BUYER, and BUYER may not assign or transfer BUYER's power and authority to make any draws against the General Letter of Credit, except to the extent BUYER is permitted to assign this Agreement. If SELLER elects to post the General Letter of Credit, it shall: (i) be in the form of an irrevocable commercial letter of credit with a term of at least twelve (12) months, (ii) be issued by one or more of SELLER's lenders, under its revolving credit facility, naming Escrow Agent, as beneficiary, (iii) provide for draws as set forth below in this subsection, and (iv) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing General Letter of Credit that the bank elects that it not be renewed. If the General Letter of Credit is not timely renewed and SELLER has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent shall draw upon the same and hold it pursuant to the terms of the General Escrow Agreement, and the terms hereof related to the Escrow Agent shall be included in the General Escrow Agreement.

v. Notwithstanding anything in this Agreement to the contrary, SELLER shall be required to replenish the General Escrow Fund in the event any disbursements are made from the General Escrow Fund in accordance with the terms of this **Section 10** within fifteen (15) days after written notice of any such disbursement. Any failure by SELLER to replenish the General Escrow Fund within such fifteen (15) day period shall constitute an immediate default under this Agreement that shall not be subject to any further notice or cure period pursuant to **Section 15.c.** hereof. SELLER's obligation to replenish the General Escrow Fund as provided herein shall survive as provided in the General Escrow Agreement.

vi. Payments shall be made from the General Escrow Fund in accordance with the General Escrow Agreement.

11. DOCUMENTS FOR CLOSING

a. At Closing, SELLER and BUYER, as applicable, shall execute and deliver (or cause to be executed and delivered) to each other the following documents and instruments:

i. the Deed;

ii. the Owner's Affidavit;

iii. the closing statement in form and substance reasonably acceptable to the Parties;

iv. a "bring-down" certificate from each of SELLER and BUYER stating that the representations and warranties of each respective Party contained in Section 12 (excluding BUYER's representation in Section 12.c.vi) are true and correct;

v. the Lease;

vi. the NDSA;

vii. the General Escrow Agreement;

viii. an assignment and assumption of Tenant Leases, in form and substance as attached hereto as **Exhibit 11.a.viii**;

ix. all of the documents and instruments required to be delivered by SELLER pursuant to Section 6.c. of this Agreement;

x. an assignment and assumption of contracts, in form and substance attached hereto as **Exhibit 11.a.x** ("Assignment of Contracts");

xi. The Memorandum of Agreement;

xii. all other documents and instruments provided for under this Agreement, required by the Title Company or reasonably required by BUYER or SELLER to consummate the transaction contemplated by this Agreement, all in form, content and substance reasonably required by and acceptable to BUYER or SELLER, as may be applicable.

xiii. SELLER and BUYER shall execute and deliver easements, in form and substance reasonably acceptable thereto (and at the sole cost and expense of the Party requesting the applicable easement(s)) with respect to: (i) BUYER's right to use SELLER's railroad crossings; and (ii) either Party's right to maintain and relocate existing utilities and/or access over and across the Premises or SELLER's retained property if reasonably necessary for the continued use and operation thereof (it being agreed that the foregoing shall include a drainage easement, not to exceed 320 acres in area, in favor of SELLER's citrus processing plant for a term of five (5) years). The instruments described in clauses (i) and (ii) above shall be reasonably agreed upon prior to the Closing Date.

xiv. The Relocation Agreement.

b. The BUYER shall prepare or cause the Closing Agent to prepare a draft closing statement and submit it to SELLER at least ten (10) days prior to the scheduled Closing Date.

12. REPRESENTATIONS AND WARRANTIES

a. SELLER's Representations. As a material inducement to BUYER entering into this Agreement, SELLER represents and warrants to and covenants with BUYER that the following matters are true as of the Effective Date and that they will also be true as of Closing:

i. To SELLER's Knowledge, the description information concerning the Premises set forth in Section 1 hereof is generally accurate, unless otherwise disclosed by the Title Binder or Survey, or any updates thereof.

ii. Except as set forth on Schedule 12.a.ii(A) or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, each applicable SELLER (a) owns fee simple record title to the Premises, and (b) there are no outstanding options to purchase or rights of first refusal or restrictions on transferability affecting the Premises or any portion thereof. Except for the leases set forth on Schedule 12.a.ii(B) (the "Tenant Leases") and the matters disclosed on Schedule 12.a.ii(A) or as may be otherwise disclosed on the Title Binder or Surveys or any updates thereto, none of the Premises is subject to any lease or other occupancy agreements in favor of any third party.

iii. To SELLER'S Knowledge, SELLER is not in default, nor do any circumstances exist which would give rise to a default under any of the documents, recorded or unrecorded, referred to in the Title Commitment. Without limiting the foregoing, except as set forth on Schedule 12a.iii, SELLER has not received any written notice from the appropriate governmental entity (x) that SELLER is not in compliance with any Governmental Approval or (y) that SELLER is not in compliance with all applicable federal, state, county or other governmental laws, ordinances, regulations, licenses, permits and authorizations, including, without limitation, Environmental Laws (collectively, the "Laws"), relating to or in any way affecting the Premises that remains uncured as of the date hereof, except where the failure to so comply would not reasonably be expected to have a material adverse effect on the Premises.

iv. Except as specifically set forth in this Agreement or the Schedules to this Agreement, there are no facts or circumstances of which SELLER has

Knowledge that could reasonably be expected to have a material adverse effect on the Premises.

v. To the Knowledge of SELLER, Schedule 12.a.v. contains a true and complete list of the Governmental Approvals possessed by SELLER that are necessary to entitle or permit SELLER to own, lease and operate the Premises (the "Required Governmental Approvals") and the applicable SELLER set forth thereon is the authorized holder of each such Required Governmental Approval. To the Knowledge of SELLER, SELLER possesses all Required Governmental Approvals necessary to own and operate the Premises as they are currently owned and operated. Except as set forth on Schedule 12a.iii, SELLER has not received written notice that any Required Governmental Approval is not in full force and effect in the jurisdiction where it is required under applicable Laws.

vi. Except as set forth on Schedule 12a.vi, there is no pending, or, to SELLER's Knowledge, threatened judicial, county or administrative proceedings or any judgment, order, injunction, decree, consent decree, ruling, or writ of any governmental authority materially affecting the Premises or in which SELLER is or will be a party by reason of SELLER's ownership of the Premises or any portion thereof, including, without limitation, proceedings for or involving condemnations, eminent domain or zoning violations, or personal injuries or property damage alleged to have occurred on the Premises or by reason of the condition or use of the Premises. No attachments, execution proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings are pending, or, to SELLER's Knowledge, threatened against SELLER. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, SELLER shall promptly advise BUYER in writing.

vii. The execution and delivery of this Agreement by SELLER has been, and subject to SELLER receiving the SELLER's Approvals, (i) all the documents to be delivered by SELLER to BUYER at Closing by SELLER, and (ii) the performance of the Agreement by SELLER, will be, duly authorized by SELLER. Assuming the due authorization, execution and delivery by BUYER of this Agreement, this Agreement will be binding on SELLER and enforceable against SELLER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than; (i) the SELLER's Approvals; (ii) any such consent which already has been unconditionally

given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by SELLER nor the consummation of the transactions contemplated hereby by SELLER will: (i) violate any court order, or violate or conflict with any contract or agreement to which SELLER is a party and the Premises is subject, except to the extent that such violation would not reasonably be expected to have individually or in the aggregate, a material adverse effect on the Premises or the transactions contemplated under this Agreement; or (ii) result in the creation or imposition of any lien (other than the Title Exceptions), with or without the giving of notice or the lapse of time or both, on any of the Premises.

viii. To SELLER's Knowledge, there are no facts or circumstances which would materially impair the continued use of the Premises for agricultural purposes employed by SELLER, in SELLER's ordinary course of business, consistent with past practices.

ix. As to the environmental condition of the Premises, except as disclosed by the BUYER's Environmental Assessment or as set forth on **Schedule 12.a.iii** or **Schedule 12.a.vi**:

(1) For purposes of this Agreement, pollutant ("Pollutant") shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by environmental laws. Disposal ("Disposal") shall mean Pollution as defined as **Section 376.301(37)** of the Florida Statutes Annotated (provided that for purposes of this **subsection 12.a.ix.(1)** "pollutants" in **Section 376.301(37)** of the Florida Statutes Annotated shall mean Pollutants as defined in this **subsection 12.a.ix.(1)**) and the release, storage, use, handling, discharge, or disposal of such Pollutants. Environmental laws ("Environmental Laws") shall mean any applicable federal, state, or local laws, statutes, ordinances, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment. Pesticides ("Pesticides") means any Pollutant defined as a pesticide under **Section 487.021(49)** of the Florida Statutes Annotated. "FIFRA" means the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. § 136 et seq. Solely for purposes of this **subsection 12.a.ix.**, "Knowledge" shall be deemed to mean, with respect to SELLER, the actual knowledge of Peter Briggs, as environmental consultant of SELLER, and Edward Almeida (Vice President, Legal Affairs), all without imputation or attribution; provided however that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege.

(2) The SELLER has obtained, and has not received written notice of any violations under, any and all permits regarding the Disposal of Pollutants on the Premises or contiguous property owned by SELLER.

(3) The SELLER has no Knowledge of, nor has it received any written notice of, any past, present or future events, conditions, activities or practices which may give rise to any liability or form a basis for any claim, demand, cost or action relating to the Disposal of any Pollutant, or alleged violation of any Environmental Laws, on or under the Premises or on contiguous property.

(4) There is no civil, criminal or administrative action, suit, claim, demand, investigation or notice of violation pending, or to SELLER's Knowledge, threatened against the SELLER relating in any way to the Disposal of Pollutants, or an alleged violation of Environmental Law, on or under the Premises or on any contiguous property owned by SELLER.

(5) To the Knowledge of SELLER, all applications of Pesticide on or to the Premises by SELLER have been applications of a pesticide product registered under FIFRA if such application occurred after FIFRA had been enacted, and have been done in accordance with the instructions on the labels applicable to such Pesticides.

(6) To the Knowledge of SELLER, all applications of fertilizer on the Premises by SELLER have been "the normal application of fertilizer" within the meaning of Section 101(22)(D) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Secs. 9601 et seq.;

(7) All determinations related to the status of any portion of the Premises as Prior Converted Cropland pursuant to the National Food Security Act Manual for the implementation of the Food Security Act of 1985 or the Clean Water Act (Final Rule, 58 FED. REG. 45,008, 45,034, August 25, 1993) that SELLER has received or possess are listed on Schedule 12.a.ix.; and to SELLER's Knowledge, true and correct copies of such determinations and documents and information related to Prior Converted Cropland status of any portion of the Premises have been provided to BUYER.

x. Parent is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware. SBG is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida. SGGC is a corporation duly organized, validly existing, and its status is active under the laws of the State of Florida.

xi. Subject to the terms and conditions contained herein, SELLER shall use its commercially reasonable efforts to take, or cause to be taken, all appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Section 7 of this Agreement.

xii. SELLER shall promptly notify BUYER of any material change in any condition with respect to the Premises or of any event or circumstance which makes any representation or warranty of SELLER to BUYER under this Agreement untrue or misleading, or any covenant of SELLER under this Agreement incapable or less likely of being performed, it being understood that the SELLER's obligation to provide notice to BUYER under this subparagraph shall in no way relieve SELLER of any liability for a breach by SELLER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, SELLER has no Knowledge of any event or circumstance which makes any representation or warranty of BUYER under this Agreement untrue or misleading.

xiii. Except as set forth on Schedule 12.a.xiii, SELLER has made no other outstanding agreement for purchase and sale applicable to the Premises other than this Agreement.

xiv. To SELLER's Knowledge, all items delivered by SELLER pursuant to this Agreement (except for the Title Binder, Prior Surveys, Surveys, Title Updates (if any), Survey Updates (if any) or any information previously delivered by SELLER with respect to the SELLER's business or other assets other than the Premises), are and will be true, correct and complete in all material respects and fairly represent the information set forth therein and no such items omit to state information necessary to make the information contained therein or herein true and correct.

xv. Intentionally Deleted.

xvi. SELLER warrants that no person, individual, firm, association, joint venture, partnership, estate, trust, syndicate, fiduciary, corporation, or other entity or group (hereinafter referred to as "Person") is entitled to a fee, consideration, real estate commission, percentage, gift, or other non-monetary consideration from SELLER (a) in connection with this Agreement or Related Agreements or the subsequent Closing, (b) as compensation contingent upon BUYER entering into this Agreement or

the Related Agreements or the subsequent Closing the contemplated transaction, or (c) to solicit or secure this Agreement or Related Agreements (hereinafter referred to as "Fees"), except as accurately disclosed on, or exempt from disclosure pursuant to the terms of, the Beneficial Interest and Disclosure Affidavit dated as of the date hereof and attached hereto and made a part hereof as **Exhibit 12.a.xvi**. ("Affidavit"). SELLER and BUYER agree that, if necessary, at closing SELLER may execute and deliver to BUYER an updated Affidavit dated the date of the Closing in order to disclose any Fees payable by SELLER to any Persons that arise during the time between the Effective Date and the Closing Date ("Closing Affidavit"). If SELLER determines that it will execute and deliver a Closing Affidavit, SELLER shall first deliver a draft of the Closing Affidavit to BUYER no later than ten (10) business days prior to Closing for BUYER'S review. BUYER'S satisfaction of the matters disclosed in any Closing Affidavit is a condition precedent to BUYER'S obligations to close the transactions contemplated by this agreement as provided in **subsection 7.a.xvii.** Except as provided under **subsection 19.h.**, SELLER shall pay all Fees, and SELLER shall indemnify and hold BUYER harmless from any and all claims for Fees, whether disclosed or undisclosed. Furthermore, if, prior to Closing, BUYER becomes aware that a Person is owed a Fee from SELLER and such Person is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, then BUYER shall have the right to (A) terminate this Agreement without thereby waiving any action for damages resulting from such nondisclosure, or (B) proceed to Closing and reduce the Purchase Price by the full amount of such Fee owed from SELLER to such undisclosed Person. If BUYER proceeds to Closing and the Fee owed to the undisclosed Person is a gift or other non-monetary consideration or benefit, then the Purchase Price shall be reduced by the fair market value of such gift or other non-monetary consideration or benefit. If, after Closing, BUYER becomes aware that a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, then BUYER may recover from SELLER the full amount of such Fee ("Post-Closing Recovery Amount"). If the Fee paid to such undisclosed Person is in the form of a gift or other non-monetary consideration or benefit, BUYER may recover the fair market value of such gift or other non-monetary consideration or benefit from SELLER. BUYER and SELLER hereby acknowledge and agree that if a Fee has been paid by SELLER to a Person that is not disclosed on, or exempt from disclosure pursuant to the terms of, the Affidavit or the Closing Affidavit, as applicable, and BUYER does not become aware of such undisclosed Fee until after Closing, it will be difficult to quantify and determine BUYER's damages, and therefore, BUYER and SELLER agree that the Post Closing Recovery Amount is a fair and reasonable liquidated damages amount, and not a penalty. The provisions of this subparagraph

12.a.xvi. shall survive the delivery and recording of the deed or other instrument pursuant to Section 18. The term "Related Agreements" means the Deed(s), the General Escrow Agreement, and the Lease.

xvii. With respect to each of the Tenant Leases, the following information is true and correct, except as may be otherwise set forth on Schedule 12a.xvii, (A) each of the Tenant Leases is in full force and effect on the terms set forth therein and has not been modified, amended, or altered, in writing or otherwise, and each tenant ("Tenant") under the Tenant Leases is legally required to pay all sums and perform all obligations set forth in the Tenant Leases (in accordance with the terms of the Tenant Leases), without other concessions, abatements, offsets, defenses or other basis for relief or adjustment; (B) all obligations of the SELLER, under the Tenant Leases which have accrued prior to Closing will be or have been performed, and no Tenant has asserted or, has any defense to, offsets or claims against, rent payable by it or the performance of its other obligations under its lease; SELLER has no outstanding obligation to provide any Tenant with an allowance to construct, or to construct at its own expense, any tenant improvements; (C) to SELLER's Knowledge, no Tenant is in default under or in arrears in the payment of any sums or in the performance of any obligation required of it under its Tenant Lease, and no circumstance exists which, with notice or the passage of time, or both, would give rise to a default, and no Tenant has prepaid any rent or other charges or given security deposits beyond the payment terms described in each Tenant Lease; (D) SELLER has received no written notice that any Tenant is or may become unable to or unwilling to perform any or all of its obligations under its lease, whether for financial or legal reasons or otherwise; (E) no guarantors of any of the Tenant Leases have been released or discharged, voluntarily or involuntarily, or by operation of law, from any obligation under or in connection with any of the Tenant Leases or any transaction related thereto; (F) SELLER has not applied and shall not apply any security deposit to rent due from any Tenant whose Tenant Lease shall not terminate prior to Closing; (G) the exclusive responsibility for all expenses connected with or arising out of the negotiation, execution and delivery of the Tenant Leases, including, without limitation, brokers' commissions, leasing fees and the cost of all tenant improvements have been paid; (H) after the Effective Date, SELLER shall neither execute any new lease for the Premises nor renew, modify or grant any material consent with respect to any existing Tenant Lease without BUYER's prior written consent, which consent may be withheld in BUYER's reasonable discretion; provided, however that in no event shall BUYER's consent be required if such new lease or renewal, modification or consent by SELLER with respect to an existing Tenant Lease is (i) consistent with SELLER's ordinary course of business and the term of such new lease or existing Tenant Lease which is being renewed, modified or for which SELLER's consent is being requested has a lease

term which expires on or prior to the term of the Lease or can be terminated by SELLER without penalty upon thirty (30) days notice; or (ii) otherwise contemplated by the terms of any such Tenant Lease; (I) no new Tenant Lease shall violate the terms of any of the existing Tenant Leases; (J) without the prior written consent of BUYER, which may be withheld in BUYER's sole and absolute discretion, SELLER shall not, prior to Closing, terminate any of the Tenant Leases unless such termination is in the ordinary course of SELLER's business, in which event no such consent is required; and (M) after the Effective Date, SELLER shall not enter into any contract or other agreement (other than a lease as provided for above) with respect to the Premises which will survive Closing and be binding upon BUYER or the Premises without BUYER's prior written consent, which consent may be withheld in BUYER's sole and absolute discretion.

xviii. Intentionally Deleted.

xix. The SELLER hereby represents and warrants that neither the Parent nor any Selling Subsidiary has received any written notice during the past three years from any insurance carrier regarding defects or inadequacies in the Premises wherein SELLER was notified that if not corrected would result in termination of insurance coverage or increase its insurance premium in any material respect.

xx. The SELLER hereby represents and warrants that Schedule 12.a.xx contains a list of all casualty, liability and workers' compensation insurance coverage (specifying the insured, insurer, amount of coverage, type of insurance and policy number), maintained by SELLER and relating to the Premises (the "Insurance Policies"), and copies of which have been made available to BUYER. To the Knowledge of SELLER, with respect to each such Insurance Policy: (i) such policy is valid and enforceable in accordance with its terms and is in full force and effect; (ii) none of SELLER are in material breach (including any such breach with respect to the payment of premiums or the giving of notice); (iii) no event has occurred which, with notice or the lapse of time, would constitute a material breach or permit termination or modification, under any such Insurance Policy; (iv) no notice of cancellation or termination of, or general disclaimer of liability under any such policy has been received by the applicable SELLER. As of the date hereof, no claims under the Insurance Policies are outstanding other than any claims that would not reasonably be expected to have a material adverse effect.

xxi. Other than as disclosed on the Affidavit, the SELLER hereby represents and warrants that SELLER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to

an valid claim against BUYER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.

xxii. Intentionally Deleted.

xxiii. The SELLER hereby represents and warrants that SELLER (on a consolidated basis) is Solvent and, after giving effect to the transactions contemplated hereby, will be Solvent. Each SELLER will receive valuable direct and indirect benefits as a result of the consummation of the transactions contemplated hereby and these benefits constitute "reasonably equivalent value" and "fair consideration" as those terms are used in the United States Bankruptcy Code, as amended (11 U.S.C., et seq.), or any other applicable bankruptcy law or state fraudulent transfer or conveyance statute, and the related case law. The term "Solvent" means, with respect to any Person on a particular date, that on such date (a) the fair market value of the property of such Person is greater than the total amount of its liabilities, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liabilities of such Person on its debts (including, without limitation, its liabilities under this agreement, and its stated and contingent liabilities) as they become absolute and matured, (c) such Person has not incurred, does not intend to incur and does not believe that it will incur debts or liabilities beyond its ability to pay as such debts and liabilities mature, (d) such person has not made a transfer or incurred an obligation under this agreement with the intent to hinder, delay or defraud any of its present or future creditors, and (e) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which its assets would constitute an unreasonably small capital.

xxiv. No representation or warranty by SELLER in this Agreement, and no statement made by SELLER in the Schedules hereto, or any certificate or other document prepared by SELLER and furnished or to be furnished to BUYER pursuant hereto, or in connection with the negotiation, execution or performance of this Agreement, contains or will at the Closing contain any untrue statement of a material fact or omits or will omit to state a material fact required to be stated herein or therein or necessary to make any statement herein or therein not misleading (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard).

b. The representations and warranties made in this Agreement by SELLER shall be continuing (subject to Section 18) and shall be deemed remade by SELLER as of Closing with the same force and effect as if in fact made at that time. SELLER shall be liable to BUYER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that BUYER incurs as a result of any warranty or representation made by SELLER in

this Agreement not being true and correct in all material respects as of the Effective Date and Closing Date (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard), all as and to the extent provided in Section 15 and subsection (e) below. Notwithstanding anything to the contrary herein, but subject to subsection (e) below, the effect of the representations and warranties made in this Agreement shall not be diminished or deemed to be waived by any inspections, tests or investigations made by BUYER or its agents.

c. BUYER's Representations. As a material inducement to SELLER entering into this Agreement, BUYER represents and warrants to and covenants to SELLER that the following matters are true as of the Effective Date and that they will also be true as of Closing:

i. The execution and delivery of this Agreement by BUYER has been, and subject to BUYER receiving the BUYER's Approval and Validation, (i) all the documents to be delivered by BUYER to SELLER at Closing by BUYER, and (ii) the performance of the Agreement by BUYER, will be, duly authorized by BUYER. Assuming the due authorization, execution and delivery by SELLER of this Agreement, this Agreement will be binding on BUYER and enforceable against BUYER in accordance with its terms, conditions and provisions, except as such enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium, receivership, conservatorship and other laws relating to or affecting creditor's generally and by general equitable principles. No consent to such execution, delivery and performance is required from any person, beneficiary, partner, limited partner, shareholder, creditor, investor, judicial or administrative body, governmental authority or other party other than; (i) the BUYER's Approvals; (ii) any such consent which already has been unconditionally given; or (iii) where failure to obtain such consent would not be reasonably expected to have an adverse effect on the Premises. Neither the execution of this Agreement by BUYER nor the consummation of the transactions contemplated hereby by BUYER will violate any court order, contract or agreement to which BUYER is a party.

ii. Except as set forth in Schedule 12.c.ii, there is no pending, or, to BUYER's Knowledge, threatened judicial, county or administrative proceedings that would reasonably be expected to impair or delay the ability of BUYER to perform its obligations under this Agreement. In the event any proceeding of the character described in this subparagraph is initiated prior to Closing, BUYER shall promptly advise SELLER in writing.

iii. Subject to the terms and conditions contained herein, BUYER shall use its commercially reasonable efforts to take, or cause to be taken, all

appropriate action, and to make, or cause to be made, all filings necessary, proper or advisable under any Laws and to consummate and make effective the transactions contemplated by this Agreement, including commercially reasonable efforts to obtain, prior to the Closing Date, all permits, consents, approvals, authorizations, qualifications, waivers and orders as are necessary for consummation of the transactions contemplated by this Agreement and to fulfill the conditions to consummation of the transactions contemplated hereby set forth in Section 7 of this Agreement.

iv. BUYER shall promptly notify SELLER of any event or circumstance which makes any representation or warranty of BUYER to SELLER under this Agreement untrue or misleading, or any covenant of BUYER under this Agreement incapable or less likely of being performed, it being understood that the BUYER's obligation to provide notice to SELLER under this subparagraph shall in no way relieve BUYER of any liability for a breach by BUYER of any of its representations, warranties or covenants under this Agreement. As of the Effective Date, BUYER has no Knowledge of any event or circumstance which makes any representation or warranty of SELLER under this Agreement untrue or misleading; provided, however, this representation shall not be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.

v. BUYER hereby represents and warrants that BUYER has not agreed to pay any fee or commission to any agent, broker, finder, investment banker, or any other Person for or on account of services rendered as a broker or finder in connection with this Agreement or the transactions contemplated hereby that would give rise to an valid claim against SELLER or its Affiliates for any brokerage commission, finder's fee, investment banking fee, or similar payment.

vi. Based upon the most recent projections of ad valorem tax revenues as promulgated by the State of Florida, Office of Economic and Demographic Research, in its report dated March 4, 2009, updated March 16, 2009, and BUYER's current ad valorem millage rates, BUYER represents that, to BUYER's Knowledge, it expects to be able to pay debt service on Certificates of Participation sufficient to pay the Purchase Price with an average rate of interest not to exceed 7.5% and a final maturity (assuming substantially level debt service) of 30 years. This representation is not continuing and BUYER is not required to update this representation at any time in the future, notwithstanding the provision of Section 12.d. hereof. BUYER makes no representation as to its ability to obtain financing for the transaction contemplated hereunder or its ability to issue Certificates of Participation as described herein.

d. The representations and warranties made in this Agreement by BUYER shall be continuing (subject to Section 18) and shall be deemed remade by BUYER as of Closing with the same force and effect as if in fact made at that time. BUYER shall be liable to SELLER before and after Closing for any loss, damage, liability or cost (including but not limited to reasonable attorneys fees and costs) that SELLER incurs as a result of any warranty or representation made by BUYER in this Agreement not being true and correct in all material respects (provided, however, that the foregoing materiality standard shall not apply to any representation or warranty that is already qualified to a materiality standard) as of the Effective Date and Closing Date, all as and to the extent provided in Section 15 and subsection (e) below.

e. A representation or warranty will not be deemed to be untrue or incorrect on the Closing Date if such representation or warranty was originally true on the Effective Date and such representation or warranty thereafter became untrue for reasons other than the intentional or willful misconduct of the representing Party or due to events beyond the representing Party's reasonable control causing the same to be untrue, whereupon such representation or warranty shall be deemed to be conformed to such new circumstances, provided, however, that, in such event, the failure of such original (non-conformed) representation or warranty to be true and correct shall continue to be a condition precedent to Closing for the purposes of Section 7.a.vi or Section 7.c. i, respectively.

f. For purposes hereof, "Knowledge" shall be deemed to mean, (a) with respect to SELLER, the actual knowledge of the respective (i) Robert H. Buker, Jr., President and Chief Executive Officer, Gerard A. Bernard, Chief Financial Officer and Carl Stringer, Chief Information Officer of Parent, and Edward Almeida (Vice President, Legal Affairs), provided however, that the actual knowledge of Edward Almeida shall exclude any information that is protected by a legal privilege, (ii) Ricke Kress, President of SGGC, and (iii) Malcolm S. (Bubba) Wade, Jr., Vice President of SBG, and (b) with respect to BUYER, the actual knowledge of Carol Wehle, Executive Director, Thomas Olliff, Assistant Executive Director, Kenneth Ammon, Deputy Executive Director, Tommy Stroud, Assistant Deputy Executive Director, Ruth P. Clements, Department Director, Land Acquisition, Abe Cooper, Senior Attorney, Sheryl Woods, General Counsel, Sarah Nail, Deputy General Counsel, Carlyn Kowalsky, Managing Attorney, Cathy Linton, Senior Attorney, and Kirk Burns, Senior Attorney, and Paul Dumars, Chief Financial Officer, all of BUYER, all without imputation or attribution, and provided, however, that the actual knowledge of any attorneys listed in this clause (b) shall exclude any information that is protected by a legal privilege.

g. Condition of Premises. BUYER hereby expressly acknowledges and agrees that, except as and to the extent expressly provided to the contrary in this Agreement, SELLER does not make, and has not made any warranty or representation whatsoever, express or implied, as to the condition or suitability of any portion of

the Premises for BUYER's intended use or otherwise (including, without limitation, NO WARRANTY OF MERCHANTABILITY, OR FITNESS FOR ANY PARTICULAR PURPOSE OR RELATING TO THE ABSENCE OF LATENT OR OTHER DEFECTS) all of which are expressly disclaimed by SELLER. BUYER has been afforded an opportunity to inspect the Premises prior to the Effective Date. Accordingly, to the extent that BUYER elects to Close under this Agreement, except as may be otherwise expressly set forth in this Agreement, including, without limitation, Section 12 and, except with respect to Pollutants and other environmental matters, other than BUYER's performance of Remediation of Pollutants Identified in BUYER's Environmental Assessment and any other obligation of BUYER expressly set forth Section 21 of this Agreement, whereby BUYER is not purchasing and accepting the Premises in an "as is" condition, BUYER shall be deemed to have purchased and accepted the Premises in its then current "as-is" condition at Closing without requiring any action, expense or other thing or matter on the part of the SELLER to be paid or performed.

13. INTENTIONALLY DELETED

14. EXPENSES

SELLER shall pay all State and County surtax and documentary stamps that are required to be affixed to the instrument of conveyance. All costs of recording the Deed(s), and all other Closing Documents to be recorded shall be paid by the SELLER. Intangible personal property taxes, if any, as well as any cost of recording corrective instruments, shall be paid by SELLER.

15. DEFAULT

a. SELLER's Default. If, after the expiration of any applicable cure period provided for below, the SELLER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then BUYER, as BUYER's sole remedies, shall have the right to seek (i) specific performance, and/or (ii) an action for actual damages; provided, however, nothing herein shall be deemed to limit BUYER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, BUYER shall not be entitled to seek, and in no event shall SELLER have any liability to BUYER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by BUYER, unless SELLER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of SELLER's willful and intentional default, in which event BUYER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach.

b. BUYER's Default. If, after the expiration of any applicable cure period provided for below, the BUYER fails or neglects to perform, the terms, conditions, covenants or provisions of, or breaches any representations or warranties under, this Agreement, prior to or after Closing, then SELLER, as SELLER's sole remedies, shall have the right to seek an action for actual damages; provided, however, nothing herein shall be deemed to limit SELLER's right to terminate this Agreement pursuant to the terms hereof. To the extent permitted by law, SELLER shall not be entitled to seek, and in no event shall BUYER have any liability to SELLER for, loss of profits or other consequential damages or punitive damages, arising from any breach of this Agreement, all of which are hereby waived by SELLER, unless BUYER's failure to perform any of the terms, conditions, covenants or provisions of this Agreement is the result of BUYER's willful and intentional default, in which event SELLER shall have all rights and remedies available at law, in equity or under this Agreement as a result of such breach. Notwithstanding any term or provision of this Agreement to the contrary, but with full reservation by BUYER of the exceptions to or limitations on rights, damages or remedies of SELLER against BUYER or other persons provided for herein, the Parties acknowledge and agree that in the event of (i) a breach by BUYER of (x) the representation made by it in Section 12.c.vi or (y) Section 12.c.iii relating to the conditions precedent set forth in Section 7.a.iv. and/or Section 7.a.xviii or (ii) wrongful termination of this Agreement by BUYER under Section 7.b. relating to the conditions precedent set forth in (x) Section 7.a.iv or (y) Section 7.a.xviii that is proven by Seller in a litigation proceeding initiated under Section 20 hereof, SELLER shall not seek to recover nor shall SELLER be entitled to recover and BUYER shall not be obligated to pay to SELLER as a result of any judgment, order or decree entered by the court in any such proceeding, whether as damages, interest, costs, attorney's fees or otherwise and separately or in the aggregate and regardless of the basis of any such claim, the theory of recovery, the nature of the alleged act or omission causing or producing such breach or the cause(s) of action alleged in any such litigation proceeding or action more than Five Million Dollars ($5,000,000).

c. Default Notice. In all cases (other than the failure of BUYER or SELLER to execute and deliver the items or funds required to be executed and/or delivered by same at Closing), each party shall, prior to exercising any remedy for a default hereunder, give the other party advance written notice of the acts or omissions alleged to have constituted a default. The party receiving such default notice shall have fifteen (15) days after receipt of such notice to cure the default, if any; provided, however that if such default cannot with due diligence be remedied by the defaulting party within said fifteen (15) day period, so long as the defaulting party commences to remedy such default within said fifteen (15) day period and thereafter prosecutes such remedy with reasonable diligence, the period of time for remedy of such failure shall be extended so long as such defaulting party prosecutes such remedy with reasonable diligence. Notwithstanding the foregoing: (a) in no event shall any cure period be deemed or permitted to extend the scheduled Closing Date pursuant to Section 4; and (b) from and after

Closing, SELLER and BUYER shall be obligated to cure any monetary defaults within thirty (30) days after receipt of written notice thereof from the other Party. If such default is not cured within such applicable period, then the parties may exercise any remedies set forth in this Agreement to the extent applicable to the subject act or omission.

d. Nonmaterial Default. Notwithstanding anything contained herein to the contrary, in no event shall either Party have the right to terminate this Agreement for a nonmaterial default or breach by the other Party.

16. RIGHT TO ENTER

a. The SELLER agrees that from the Effective Date through the Closing Date, all officers, employees, contractors and agents of the BUYER shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863) 902-2120 the right to enter upon the Premises for all proper and lawful purposes, including but not limited to inspection, investigation, examination of the Premises and the resources upon it; provided however that: (a) any such contractors or agents provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name the appropriate SELLER as an additional insured thereunder; and (b) all such inspections, investigations and examinations by BUYER or BUYER's officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of the SELLER or its business or its tenants and occupants; and (iii) at all times to comply with all of SELLER's' or its tenants' safety standards and requirements.

b. BUYER agrees to be responsible for: (x) any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while such Persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, SELLER's exclusive remedy shall be limited to compensation from BUYER in the amount of $2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre; (y) to the extent found legally responsible, any property damage that arises out of or is caused by BUYER or its officers, employees, contractors and agents while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from BUYER's or its officers', employees', contractors' and agents' inspections of or access to the Premises. BUYER shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that BUYER has the legal authority to agree to be responsible for the acts of its

officers, employees, contractors and agents". SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, legal authority to agree to the provisions of this Section 16(b). The provisions of this Section 16(b) shall survive the Closing or any termination of this Agreement for a period of one (1) year.

17. RISK OF LOSS AND CONDITION OF REAL PROPERTY

a. SELLER assumes all risk of loss or damage to the Premises prior to the Closing Date. However, in the event the condition of the Premises is materially altered by a fire, casualty, disease, act of God or other natural force beyond the control of SELLER, BUYER may elect, at its sole option, to terminate this Agreement and neither party shall have any further obligations under this Agreement. In the event BUYER elects not to terminate this Agreement, the Purchase Price shall not be reduced and any casualty insurance proceeds shall be assigned by SELLER to BUYER (it being understood that in no event shall the foregoing include any business loss/interruption insurance proceeds, which shall remain the property of SELLER).

b. In the event all or any material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking and either Party may, within twenty (20) business days after receipt of such notice, elect to terminate this Agreement by delivery of written notice to the other. If neither Party elects to exercise its option to terminate this Agreement as aforesaid, this Agreement shall remain in full force and effect, the Purchase Price shall not be reduced and both SELLER and BUYER shall be entitled to negotiate for, settle and receive any award relating to such taking, and, at Closing, SELLER shall assign to BUYER all of its rights thereto relating to the Premises, provided, however, that SELLER shall retain any separately awarded claims for the loss of its leasehold interest. In the event a non-material portion of the Premises is taken by the exercise of the power of eminent domain prior to Closing, SELLER shall give BUYER written notice of such taking; provided, however, that neither Party shall have the right to elect to terminate this Agreement or reduce the Purchase Price and this Agreement shall remain in full force and effect, with SELLER and BUYER thereupon entitled to negotiate for, settle and receive any award relating to such taking. Notwithstanding anything contained herein to the contrary, BUYER shall not be entitled to receive any award until such time as Closing occurs, whereupon BUYER shall receive a credit against the Purchase Price for any portion of the award allocated to BUYER.

18. SURVIVAL

The covenants, warranties, representations, indemnities and undertakings of SELLER and BUYER set forth in this Agreement, shall survive the Closing for a period of

two (2) years following the Closing Date, except as otherwise expressly provided in this Agreement, with the express understanding that **Section 5(f)** (Quitclaim Deeds), **Section 21** (Environmental Matters), **Section 12(a)(xvi)** (Beneficial Interest), **Section 15** (Default) **Section 26** (Option to Purchase Real Property), **Section 27** (Right of First Refusal), **Section 28** (Miscellaneous), as applicable, and other provisions relating to the Option and Right of First Refusal, shall indefinitely survive except as otherwise expressly provided in each such Section.

19. SPECIAL CLAUSES.

a. Radon Gas Disclosure. Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

b. Delivery of Information. If BUYER terminates this Agreement at any time, then, within ten (10) days thereafter, BUYER shall deliver to SELLER copies of all final, inspection reports, test results and studies prepared for it regarding the Premises, but such delivery shall be without representation or warranty from BUYER of any kind, shall at all times be subject to the rights of the professionals and other preparers of such inspection reports, test results and studies, and BUYER shall have no liability whatsoever to any Person in connection with such inspection reports, test results and studies. In connection with BUYER's delivery to SELLER of the copies described above, SELLER shall be responsible to pay for the duplication costs customarily charged by BUYER in connection with the same.

c. Intentionally Deleted.

d. Intentionally Deleted.

e. Lease Back of the Premises. At Closing, BUYER (as Landlord) and SELLER (as Tenant) shall execute (i) one (1) lease with respect to the portion of the Premises allocated to the sugar operations of SELLER (it being agreed that the non-sugar cane portions of the Premises as described on **Exhibit 19.e-1** shall not be subject to the Lease), and (ii) one (1) lease with respect to the portion of the Premises allocated to the citrus operations, such that the entirety of the Premises (excluding the portions of the Premises described in **Exhibit 19.e-1**) are leased back to SELLER, both of which leases shall be in substantially the same form as attached hereto and made a part hereof as **Exhibit 19.e-2**, as approved by the BUYER's Credit Provider, and conformed to just reflect terms applicable to each leased portion of the Premises (e.g., rent, security deposits, etc.) ("Lease"). The

"Commencement Date" set forth in the Lease shall be the same as the actual Closing Date.

f. Tenant Leases and Estoppels.

i. Prior to the Effective Date, SELLER has obtained estoppel certificates from some or all of the Tenants, the form and substance of which estoppels are acceptable to BUYER. In connection therewith, SELLER shall use reasonable good faith efforts to obtain (A) renewals of such estoppels and (B) estoppels from any new tenants in the form attached hereto as **Exhibit 19.f.ii**, no later than ten (10) days prior to the Closing Date.

ii. In the event that, prior to Closing: (a) SELLER amends or modifies any Tenant Lease, the term of which extends beyond the Lease Termination Date, then SELLER shall use commercially reasonable efforts to incorporate language into such amendment or modification that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as **Exhibit 19.f.ii** upon request of the landlord thereunder; and (b) SELLER renews a Tenant Lease (and which renewal is in SELLER's discretion to do so) or enters into a new lease, the term of which extends beyond the Lease Termination Date and is permitted pursuant to the terms of this Agreement, then SELLER shall incorporate language in such renewal or new lease that will provide for such tenant to execute and deliver an estoppel certificate in the form attached hereto as **Exhibit 19.f.ii** upon request of the landlord thereunder.

iii. On or before Closing, Seller shall use commercially reasonable efforts to modify those certain Tenant Leases, if any, which lease any portion of the Premises to grow sugar cane or citrus, so that the lessees thereunder will be obligated from and after the Closing Date to comply with the same Best Management Practices (as defined in the Lease) that SELLER will be obligated to comply with under the Lease.

g. Intentionally Deleted.

h. Fees and Costs. Except as otherwise specifically provided herein, each Party shall bear its own fees and costs, notwithstanding fee payments provided under Chapter 73, Florida Statutes (to the extent applicable), incurred by such Party in connection with the transaction contemplated by this Agreement.

i. Intentionally Deleted.

j. Relocation of Railroad Track. SELLER will not transfer to BUYER: (i) assets of the internal and external railroad system owned by Parent or South Central Florida

Express, Inc. ("SCFE") ((including without limitation railroad assets, trackage, sidings, elevators, facilities and improvements, and railroad rolling stock) (collectively, the "Railroad System"); (ii) any and all rail common carrier rights, duties, and obligations, if any, it presently has; or (iii) any assets, property rights or other rights or privileges necessary to satisfy SELLER's common carrier duties and obligations of SCFE, if any. BUYER is not a rail common carrier and will not purchase, acquire, assume or otherwise receive any rights, duties or obligations of a rail common carrier in this transaction. SELLER will retain the Railroad System, and any and all common carrier rights, duties, and obligations it presently has, including, without limitation, the common carrier duties and obligations of SCFE. In the event that BUYER reasonably determines that it is necessary to relocate any portion of the Railroad System located within the boundaries described in Schedule 19.j attached hereto (the "Relocation Area") in order to construct BUYER's project, SELLER, SCFE and BUYER shall cause such relocation pursuant to the terms of a relocation agreement (the "Relocation Agreement"), the form of which shall be mutually agreed upon by the Parties and SCFE in their reasonable discretion prior to Closing and executed, delivered and recorded at Closing. Such relocation agreement shall provide, among other things: (a) BUYER, at it sole cost and expense, shall construct the relocated track (which shall include, without limitation, the bed, the ballast, the ties, the rail and any adjacent service roads, sidings, elevators or other appurtenant facilities, if applicable); (b) the relocated track shall be in a location reasonably acceptable to SELLER, SCFE and BUYER; (c) SELLER and/or SCFE, as applicable, shall convey the underlying fee to BUYER, in its "as is" condition, of the track being abandoned in exchange for BUYER's construction and conveyance of the new track and the underlying fee to SELLER, which underlying fee shall be conveyed by BUYER in its "as-is" condition; and (d) the new track must be completed in accordance with all applicable Laws before the conveyance of the abandoned track will occur. Notwithstanding the foregoing, in no event shall BUYER be obligated to relocate any portion of the internal railroad system located within the Relocation Area if such portion "dead-ends" (i.e., does not connect to any other portion of the Railroad System but ends at a portion of the Premises which will be used for BUYER's project) and, in such event, SELLER shall convey to BUYER such "dead-end" portion of the Railroad System that is to be used for BUYER's project for no consideration and, at SELLER's option, SELLER may remove and/or leave any portion of the Railroad System in connection with such conveyance.

k. Relocation Rights. In consideration of the negotiated Purchase Price and solely to the extent applicable, SELLER hereby waive any rights or claims they may have under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 U.S.C. § 4601 et seq.).

l. Cooperation. From the Effective Date hereof through the expiration of the Lease, SELLER shall cooperate in good faith with BUYER's credit enhancers and rating agencies to provide information related to the Premises (and not the SELLER's business or other assets) and necessary for the original issuance or refinancing of

the Certificates of Participation, so long as such credit enhancers and rating agencies execute and deliver to SELLER a confidentiality agreement reasonably acceptable to SELLER. BUYER shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by SELLER in providing the information pursuant to this Section (e.g., copying fees, but not including attorneys' fees incurred by SELLER in connection with such requests).

m. Conduct of SELLER. Except (i) as may be approved in advance by BUYER in writing, or (ii) as is otherwise required by this Agreement, during the period from the date of this Agreement until the earlier of (x) the Closing Date, and (y) the date this Agreement is terminated in accordance with its terms: (A) SELLER shall use commercially reasonable efforts to maintain the Premises (including, without limitation, pumps, culverts, canals, ditches and other irrigation and drainage infrastructure) according to the ordinary course of business consistent with past practices, (B) to the extent that Closing has not yet occurred, commence and continue through Closing the applicable sugar and citrus farming operations, all as and to the extent applicable and typically performed by SELLER in the ordinary course of business consistent with past practices and (C) in addition to, and not in limitation of the covenants set forth in the foregoing clauses (A)-(B) of this paragraph, none of SELLER shall, directly or indirectly, do any of the following:

i. Sell or otherwise dispose of any of the Premises or incur or assume any new indebtedness that would affect the Premises (except SELLER may encumber the crops); provided, however that SELLER may refinance any existing indebtedness, so long as the same is released at Closing with respect to the Premises;

ii. fail to renew, maintain in full force and effect or comply with any material Required Governmental Approvals related to the Premises of any SELLER (provided, that in no event shall the foregoing be deemed to require SELLER to perform any actions or expend any money in excess of what SELLER has customarily performed or expended in SELLER's ordinary course of business consistent with past practices), provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued;

iii. fail to promptly and timely pay and discharge all federal income taxes, real property taxes and assessments (provided that SELLER shall retain the right to challenge or appeal such taxes and assessments), levied or imposed upon, or required to be withheld by, or otherwise owing by, any of SELLER or with respect to the Premises;

iv. fail to comply with all applicable Laws (other than Required Governmental Approvals which is governed by subsection ii. above) with

respect to the ownership or operation of the Premises, to the extent SELLER has complied with the same in the ordinary course of business consistent with past practices, provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued; and

v. fail to maintain and continue in full force and effect the Insurance Policies or substantially equivalent policies, make any material adverse changes in the type or amount of coverages or permit any of the Insurance Policies or substantially equivalent policies to be canceled or terminated.

Notwithstanding anything contained to the contrary in this Section 19(m) or otherwise in the Agreement, in no event shall SELLER have any contractual obligation or liability to BUYER under this Agreement to perform any work or expend any money in connection with any matters disclosed by that certain Initial Assessment Report for Facilities in Crop Areas prepared for BUYER by Shaw Environmental, Inc. dated September 26, 2008 or otherwise; it being understood and agreed that from and after the Effective Date through Closing, SELLER shall perform its customary maintenance of the Premises, consistent with past practices, as SELLER reasonably determines is necessary for the continued operation of the Premises in connection with its farming operations. Provided, however, that in no event shall the foregoing be deemed to impair or limit BUYER's regulatory rights to enforce the conditions of any Governmental Approval that BUYER has issued.

n. Intentionally Deleted.

o. Binding Contract. In addition to the Title Exceptions, BUYER acknowledges and agrees that the conveyance of the Premises from SELLER to BUYER shall be subject to the following binding contract: That certain Purchase and Sale Agreement, as amended, (the "RCP Agreement") dated as of August 30, 2005 between Parent, as seller, and Resource Conservation Properties, Inc., as BUYER, for approximately 502 acres of real property located in the City of Clewiston (the "RCP Agreement Property"). Prior to the Closing, Parent may sell any of the RCP Agreement Property pursuant to the terms of the RCP Agreement and retain all of the proceeds from such sale(s) whereupon such portion of the RCP Agreement Property conveyed shall not be deemed to be part of the Premises. To the extent that all of the RCP Agreement Property is not sold prior to the Closing Date, then, on such date, Parent shall convey title to the RCP Agreement Property to BUYER and assign all of its rights in and to the RCP Agreement to BUYER as part of the Assignment of Contracts and BUYER shall assume the obligations thereunder from and after Closing. In the event that, at the Closing, BUYER simultaneously transfers the RCP Agreement Property to the City of Clewiston, BUYER shall have the option to direct Parent to assign the RCP Agreement directly to a third-party so long as such third-party agrees to

assume the same, which assignment and assumption shall be in the same form as the Assignment of Contracts.

p. Appraisal(s). Prior to the execution of this Agreement, BUYER has obtained an appraisal(s) that is in an amount and in a form acceptable to, and complies with the statutorily mandated appraisal standards as determined by, BUYER, in its sole and absolute discretion (the "Appraisal(s)").

q. Intentionally Deleted.

20. DISPUTE RESOLUTION PROCEDURES.

a. Negotiation by the Parties. If a dispute arises between BUYER on one hand and any or all of SELLER on the other hand, executives of both Parties shall meet at a mutually acceptable time and place within ten (10) days after delivery of notice of such dispute and thereafter as often as they reasonably deem necessary, to exchange relevant information and to attempt to negotiate resolutions of the dispute. If the matter has not been resolved within ten (10) days from the referral of the dispute to the executives, either Party may initiate mediation as provided hereinafter.

b. Mediation.

i. If the dispute has not been resolved by the negotiation as provided above, the Parties shall endeavor to settle the dispute by mediation. Either Party may initiate a non-binding mediation proceeding by a request in writing to the other Party; thereupon, both Parties will be obligated to engage in mediation. The proceeding will be conducted at a mutually agreeable location in West Palm Beach, Florida.

ii. If the Parties have not agreed within ten (10) days of the request for mediation on the selection of a mediator willing to serve, Buyer will provide a list of five (5) independent mediators from which SELLER shall choose a mediator.

iii. Efforts to reach a settlement will continue until the conclusion of the proceeding, which is deemed to occur when: a written settlement is reached, the mediator concludes and informs the Parties in writing that further efforts would not be useful, the Parties agree in writing that an impasse has been reached, or a Party commences litigation in accordance with Section 20.c. Neither Party may withdraw before the conclusion of the proceeding unless litigation is commenced pursuant to the provisions of Section 20.c, or either Party has elected to terminate this Agreement in accordance with the terms of this Agreement.

iv. In case of violation of the aforesaid obligation to mediate by either Party, the other Party may bring an action to seek enforcement of such obligation in the courts specified in Section 28.d.

c. Litigation.

If the dispute has not been resolved by mediation as provided in Section 20.b. above within forty-five (45) days of the initiation of such mediation procedure, either Party may initiate litigation upon five (5) days written notice to the other Party; provided, however, that if one Party has requested the other to participate in a nonbinding procedure, as provided for under this Section 20, and the other Party has failed to participate, the requesting Party may initiate litigation before expiration of the above period. The Parties agree that all actions or proceedings arising in connection with this Agreement shall be tried and litigated exclusively in the courts specified in Section 28.d.

d. Confidentiality.

To the extent allowed by Law, all negotiations, settlement agreements and/or other written documentation pursuant to this Section 20 shall be confidential and shall be treated as compromise and settlement negotiations for purposes of the Federal Rules of Evidence and Florida Rules of Evidence.

e. Costs of Dispute Resolution.

Each Party shall bear its own fees and expenses with respect to the dispute resolution procedures and BUYER and SELLER shall each pay fifty percent (50%) of the fees and expenses of any mediator used under Section 20(b) above.

21. ENVIRONMENTAL MATTERS.

a. Certain Definitions.

i. "Action" means any action, cause of action, litigation, claim, demand, suit, arbitration, investigation or proceeding, whether civil, criminal, administrative, investigative or appellate, in law or at equity, by any Person or before any Governmental Body.

ii. "Additional Remediation" means Remediation in response to an Additional Remediation Notice identified in Section 21.c. that is delivered by BUYER to SELLER.

iii. "Additional Remediation Notice" means written notification to SELLER from BUYER that BUYER has learned of a Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida

Administrative Code, on or before the Lease Termination Date, but which was not Identified in Buyer's Environmental Assessment, which notice shall describe the factual and legal basis of such Release in reasonable detail (taking into account the information then available to BUYER), including, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and which will state that it is being provided under Section 21.c.i. of this Agreement.

iv. "Additional Remediation Schedule" means a schedule for the performance of Additional Remediation, which schedule shall be consistent with any and all applicable requirements of Environmental Law, shall identify the steps SELLER will take to obtain the Government Confirmation within seven (7) years of BUYER's delivery of its Additional Remediation Notice to SELLER, except for any Additional Remediation for which BUYER consents in writing to a longer period, and shall identify the Milestones.

v. "Affiliate" means, with respect to any Person, any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with such first Person. The term "control" (including its correlative meanings "controlled by" and "under common control with") means possession, directly or indirectly, of power to direct or cause the direction of management or policies (whether through ownership of securities or partnership or other ownership interests, by contract or otherwise).

vi. "BUYER's Environmental Assessment" means the Environmental Due Diligence Investigation Reports of the Premises prepared by or through Professional Service Industries, Inc., including all observations, findings, cost estimates, conclusions, data, risk evaluation, statistical evaluation and geospatial analyses and interpolation, tables, figures, appendices, maps, graphs, and charts, contained therein, as follows:

- Volume I, Executive Summary, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume II, Phase I Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume III, Phase II Environmental Site Assessment, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008;
- Volume IV, Ecological Risk Assessment to Support the Phase I and

Phase II Environmental Site Assessment of the United State Sugar Corporation Properties, prepared for Professional Service Industries, Inc. by Newfields, dated November 21, 2008;

- Volume V, Asbestos Survey, Due Diligence Investigation Services for the United States Sugar Corporation Acquisition, Palm Beach, Hendry, Glades, and Gilchrist Counties, Florida, dated November 21, 2008.

vii. "BUYER Indemnified Parties" means BUYER and its Affiliates and each of their respective officers, officials, directors, employees, partners, trustees, members, agents, and representatives, but does not include any of BUYER's successors in title to any portion of the Premises.

viii. "Cleanup Target Level" means:

For all areas: shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all environmental media other than groundwater, shall be the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or leachability based on groundwater criteria, or an alternative leachibility standard approved by the FDEP; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II of Chapter 62-777 of the Florida Administrative Code, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL. A Cleanup Target Level may be achieved with the use of (1) a site specific risk assessment conducted pursuant to, as applicable, Chapter 62-770, 62-730, or 62-780 of the Florida Administrative Code; (2) Institutional Controls and/or Engineering Controls; and/or (3) natural attenuation, as follows: (a) with regard to the use of Institutional Controls, BUYER hereby consents to restrictions that prohibit residential land uses, while allowing agricultural, commercial and industrial land uses, including, but not limited to, as classified by the North American Industry Classification System, United States, 2002 ("NAICS") and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004, (b) with regard to a site specific risk assessment, and other Institutional Controls, the BUYER provides its consents to the use of same (which consent shall not be unreasonably withheld) after the Effective Date, (c) with regard to natural attenuation, the BUYER consents to same (which consent shall not be unreasonably withheld) after the

Effective Date and FDEP concludes that it is reasonably likely to achieve the applicable Cleanup Target Level within five (5) years after Closing or within a longer period of time which is technically justifiable and is agreeable to FDEP, and (d) with regard to Engineering Controls, the FDEP and the BUYER, in its sole and absolute discretion, approve of the same after the Effective Date.

BUYER agrees that the Cleanup Target Levels (SCTL, GCTL, and FSCTL), applicable herein for those matters subject to Remediation by BUYER pursuant to Section 21.b. **(Remediation of Matters Identified in BUYER's Environmental Assessment)** are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect at the time of BUYER's Environmental Assessment. For Remediation pursuant to Section 21.c. the Cleanup Target Levels are those Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code that are in effect when the Additional Remediation is performed. If no Cleanup Target Levels identified in Table I or Table II of Chapter 62-777 are in effect, then the applicable Cleanup Target Levels shall be the successors thereto.

ix. "Direct Claim" means a bona fide claim for indemnification that is made in good faith by an Indemnified Party and is based on facts that can reasonably be expected to establish a valid claim under Section 21.e. or Section 21.f. of this Agreement.

x. "Direct Claim Notice" means written notification of a Direct Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such Direct Claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.

xi. "Engineering Controls" means the use of modifications to a site to reduce or eliminate the potential for migration of, or exposure to Pollutants.

xii. "Environmental Claim" means a claim asserted under Section 21.e.

xiii. "Environmental Notice" means written notification of an Environmental Claim to SELLER from a Buyer Indemnified Party, which describes the factual and legal basis of such Environmental Claim in reasonable detail (taking into account the information then available to BUYER Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all material notices, pleadings, documents, environmental reports and sampling data, and all other material written

evidence thereof, if any, and, if then known and calculable, the amount or, if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by Buyer Indemnified Party.

xiv. "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinance, rules, regulations, orders, judgments, decrees or other governmental restrictions relating to, or regulating, governing or protecting human health or the environment.

xv. "Environmental Standard" means for the Release of Pollutants, for all areas, shall be the groundwater criteria in Table I of Chapter 62-777 of the Florida Administrative Code, and for all other environmental media other than groundwater, the most stringent applicable concentration for the medium of concern identified in Table I or Table II of Chapter 62-777 of the Florida Administrative Code for either direct commercial/industrial exposure or, leachability based- on- groundwater; provided that sediment in a Class IV (Agricultural Water Supplies) body of water on the Premises shall be considered soil and that sediment in a Class III body of water on the Premises shall meet the Florida Department of Environmental Protection Guidelines for Florida Inland Waters (MacDonald et al, 2003). If no Soil Cleanup Target Level ("SCTL"), Groundwater Cleanup Target Level ("GCTL"), or Florida Surface Water Cleanup Target Level ("FSCTL") exists in Table I or Table II for a Pollutant, the SCTL, GCTL or FSCTL for it shall be established in accordance with the procedures in Chapter 62-777 for establishing an SCTL, GCTL or FSCTL.

xvi. "Final Remediation Cost Estimate" means the BUYER's good faith estimate of the cost of Additional Remediation to achieve the Cleanup Target Level for a Release of Pollutants not Identified in BUYER's Environmental Assessment and the techniques that can be used to perform the Additional Remediation.

xvii. "Governmental Body" means any (i) nation, state, county, city, town, village, district or other jurisdiction of any nature; (ii) federal, state, local, municipal, domestic, foreign, supranational or other government; or (iii) governmental, quasi-governmental, regulatory authority, agency, court, commission or other entity exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power of or pertaining to government.

xviii. "Governmental Confirmation" means a Site Rehabilitation Completion Order issued either by FDEP or a local agency if FDEP has delegated such authority to that local agency.

xix. "Indemnified Party" means any Person claiming indemnification under any provision of Section 21.e. or 21.f.

xx. "Indemnifying Party" means any Person against whom a claim for indemnification is being asserted under any provision of Section 21.e. or 21.f.

xxi. "Identified in BUYER'S Environmental Assessment" means locations of Point Source of Pollutants found, as well as Non-Point Source of Pollutants, as described in the BUYER'S Environmental Assessment, which were detected either (a) as the result of the collection of soil, sediment, groundwater and/or surface water samples, or (b) determined as the result of interpolation or geospatial statistical analyses of said data.

xxii. "Institutional Controls" means the restriction on use or access to eliminate or minimize exposure to Pollutants. Such restrictions may include deed restrictions, restrictive covenants, and conservation easements.

xxiii. "Laws" means, as to any Person, any law (including common law), regulation, rule, statute, treaty, code, ordinance, order, judgment, or decree, or any other determination or requirement of (or agreement with) a Governmental Body applicable to or binding on such Person or any of its property or assets or to which such Person or any of its property or assets is subject.

xxiv. "Lease Termination Date" means the earlier of (a) the "Expiration Date" (as defined in the Lease) or (b) the date that SELLER vacates all or a portion of the Premises, from time to time, with respect to the portion vacated, or assigns the Lease to an unaffiliated third party, with respect to the portion of the Premises so assigned.

xxv. "Liability" means any indebtedness, liability, obligation, commitment, guaranty, claim, loss, damage, penalty, fine, payment, deficiency, cost or expense (including, but not limited to, reasonable attorneys' fees and expenses, court costs and other reasonable costs of defense, including expert consultant and witness fees and costs) of any nature or kind, and whether the amount is known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, disputed or undisputed and whether due or to become due.

xxvi. "Milestones" means dates on which specific elements of the Additional Remediation will be completed as identified in the FDEP approved Remedial Action Plan.

xxvii. "Non-Governmental, Unrelated Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto, an Affiliate of a Party hereto, a successor in title of Buyer to the Premises, or a Governmental Body), in either case that can reasonably be expected to give rise to a right of indemnification for any BUYER Indemnified Party.

xxviii. "Non-Point Source of Pollutants" shall mean: (a) the wide spread presence of Pollutants in soil in cultivated fields which resulted from the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6); (b) with regard to phosphorus and nitrogen in soils or groundwater, the wide spread presence of Pollutants in cultivated fields which resulted from the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4); and (c) ambient agricultural contamination in cultivated fields in association with the normal application of fertilizer.

xxix. "Offsite Environmental Liabilities" means any Liabilities that arise out of or relate to either directly or indirectly or that result in whole or in part from the arrangement for disposal off of the Premises, or transportation by the SELLER of, any Pollutants generated or used in connection with the Premises on or prior to the Lease Termination Date.

xxx. "Person" means any natural person, corporation (including any non-profit corporation), general or limited partnership, limited liability company, proprietorship, other business organization, trust union, association, organization, other entity or Governmental Body.

xxxi. "Point Source of Pollutants" means a Release of Pollutants, but does not include a Non-Point Source of Pollutants.

xxxii. "Pollutant Liabilities" means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from the presence, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date.

xxxiii. "Pollutants" shall mean any hazardous or toxic substance, material, or waste of any kind or any contaminant, pollutant, petroleum, petroleum product or petroleum by-product as defined or regulated by Environmental Laws.

xxxiv. "Previously Unknown Pollutant Liability" means any Liabilities that arise out of or relate to either directly or indirectly, or that result in whole or in part, from Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this Section 21.a.xxxiv., "pollutants" in § 376.301(37) shall mean Pollutants as defined in Section 21.a.xxxiii of this Agreement) and the spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water on, at, to, from or under the Premises on or prior to the Lease Termination Date, except for (a) any such Liabilities arising out of Non-Point Source of Pollutants or Point Source of Pollutants Identified in the BUYER'S

Environmental Assessment, (b) any such Pollutants for which Buyer Indemnified Parties have not submitted an Environmental Notice under Section 21.b. or Section 21.c.i., any such Pollutants for which BUYER has not breached its obligation under Section 21.b. or Section 21.c.ii.2, or both.

xxxv. "Release" means Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this Section 21.a.xxxv, "pollutants" in § 376.301(37) shall mean Pollutants as defined in Section 21.a.xxxiii of this Agreement) and any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping or disposing of Pollutants in soil, sediment, groundwater or surface water, but shall not include (i) the legal application of pesticides for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 487.081(6), (ii) the contamination of groundwater or surface water which is the result of the application of fertilizers for which the FDEP is not authorized to institute proceedings against a property owner under Fla. Stat. § 576.045(4), or (iii) a Non-Point Source of Pollutants.

xxxvi. "Remediation" means those steps taken, or that will be taken, to achieve the applicable Cleanup Target Level and obtain Governmental Confirmation.

xxxvii. "SELLER Indemnified Parties" means PARENT, the SELLING SUBSIDIARIES, their respective Affiliates and each of their respective officers, officials, directors, employees, partners, stockholders, trustees, members, agents and representatives.

xxxviii. "Third Party Claim" means any claim made or any Action commenced by any Person (other than a Party hereto or an Affiliate of a Party hereto), in either case that can reasonably be expected to give rise to a right of indemnification for any Indemnified Party from an Indemnifying Party.

xxxix. "Third Party Claim Notice" means a written notification of a Third Party Claim to an Indemnifying Party, which notice shall describe the factual and legal basis of such claim in reasonable detail (taking into account the information then available to such Indemnified Party), including the sections of this Agreement that form the basis of such claim, copies of all notices, pleadings, documents, and all other material written evidence thereof, if any, and, if then known and calculable, the amount or if not then known or calculable, a good faith estimate of the Liabilities that have or may be sustained by the Indemnified Party.

b. Remediation of Matters Identified in BUYER'S Environmental Assessment BUYER has performed BUYER's Environmental Assessment and performed sampling in those areas of the Premises where BUYER identified concerns regarding the likely presence of Pollutants. BUYER's Environmental

Assessment has revealed the presence of Pollutants. In exchange for the payment of EIGHT MILLION SIX HUNDRED THOUSAND AND NO/100 U.S. DOLLARS ($8,600,000.00) by SELLER at closing, BUYER shall perform the Remediation of the Pollutants Identified in the BUYER'S Environmental Assessment as required by Environmental Laws as the Person Responsible for Site Rehabilitation ("PRSR"), and secure all applicable Governmental Confirmations with respect thereto and SELLER, except as provided in Section 21.c. below, shall thereafter have no obligation or liability to BUYER to perform Remediation of the Pollutants Identified in the BUYER's Environmental Assessment.

c. Remediation of Point of Source Pollutants

i. If after the Effective Date BUYER learns of any Release of Pollutants on, to or under the Premises that occurred or exists in excess of the Environmental Standard, or groundwater contamination that may be associated with Non-Point Source of Pollutants that exceeds the Natural Attenuation Default Concentrations established in Table V of Chapter 62-777, Florida Administrative Code, on or before the Lease Termination Date, but which was not Identified in BUYER's Environmental Assessment, and BUYER provides an Additional Remediation Notice to SELLER on or before three (3) years after the Lease Termination Date, the provisions of this Section 21.c. shall apply. If within forty-five (45) business days of receipt of the Additional Remediation Notice, SELLER delivers written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, either SELLER or BUYER may initiate dispute resolution procedures as provided in Section 20. If within forty-five (45) business days after SELLER's receipt of the Additional Remediation Notice from BUYER, which must be delivered in accordance with Section 24, SELLER does not deliver written notice to BUYER that it disputes that the Release of Pollutants identified in the Additional Remediation Notice occurred or exists in excess of the Environmental Standard on or before the Lease Termination Date, or that same was not Identified in BUYER's Environmental Assessment, then, in that event, SELLER will not subsequently dispute its liability in connection with such notice. Unless the dispute resolution procedures are initiated as set forth above, within fifty (50) business days of receipt of the Additional Remediation Notice by SELLER, BUYER and SELLER shall meet to attempt to reach agreement concerning the reasonably estimated aggregate cost of Additional Remediation. If such agreement is not reached and signed by both BUYER and SELLER within twenty (20) business days of initiating negotiations, then BUYER shall deliver to SELLER its Final Remediation Cost Estimate, together with any and all supporting information deemed relevant by BUYER to the determination of a

reasonably estimated aggregate cost of the Additional Remediation in order to achieve the applicable Cleanup Target Level so that Governmental Confirmation can be obtained, and which is to be performed, as applicable, under Chapter 62-770, 62-730 or 62-780 of the Florida Administrative Code.

ii. At the written election of SELLER, which shall be provided to BUYER within fifteen (15) business days after receipt of the BUYER's Final Remediation Cost Estimate for matters listed in an Additional Remediation Notice, SELLER shall elect to have the Additional Remediation accomplished as follows pursuant to either Section 21(c)(ii)(1) or (2):

(1) SELLER shall perform the Additional Remediation described in the BUYER's Final Remediation Cost Estimate in accordance with Environmental Law, shall use only the techniques identified in the Final Remediation Cost Estimate to perform the Additional Remediation, shall be the Person Responsible for Site Rehabilitation, shall secure all applicable Governmental Confirmations with respect to the Additional Remediation, and shall provide a copy of such Governmental Confirmations to BUYER promptly upon receipt. SELLER shall be entitled to be reimbursed for the performance of such Additional Remediation from the General Escrow Fund, from time to time, in accordance with the terms of the General Escrow Fund Agreement; or

(2) One hundred thirty percent (130%) of the Final Remediation Cost Estimate shall be paid to BUYER from the General Escrow Fund and BUYER shall perform the Additional Remediation and secure the Governmental Confirmations with respect to the applicable Additional Remediation. In such event, all financial and performance obligations contained in this Agreement with respect to such Additional Remediation, other than the payment of one hundred thirty percent (130%) of the Final Remediation Cost Estimate, shall be the sole obligation and liability of BUYER, and SELLER shall have no further obligation or liability with respect to such Additional Remediation. BUYER shall perform such Additional Remediation in accordance with Environmental Law as the Person Responsible for Site Rehabilitation, and will secure all applicable Governmental Confirmations with respect thereto.

iii. If SELLER elects to perform the Additional Remediation as provided in Section 21.c.ii.(1), then SELLER shall perform the Additional Remediation as follows: (i) within ninety (90) days after SELLER's election, SELLER shall deliver to BUYER a proposed Additional Remediation Schedule and proposed work plans for performing the Additional Remediation and receiving all Governmental Confirmations for

the Additional Remediation within seven (7) years of BUYER's submittal of its Additional Remediation Notice, unless BUYER consents in writing to a longer period; (ii) within thirty (30) days of receiving written comments from BUYER requesting revisions to such proposed Additional Remediation Schedule and work plans, consider all such revisions as are reasonably requested by BUYER (including revisions to the Milestones to reasonably accommodate the construction schedule of BUYER for a South Florida Water Management District project on the Premises) and deliver the Additional Remediation Schedule (which shall contain Milestones) and work plans to BUYER; (iii) perform all such Additional Remediation at its own expense, subject to being reimbursed for the same from the General Escrow Fund in accordance with the General Escrow Agreement, and shall perform the Additional Remediation even if the actual cost exceeds the amount paid to the General Escrow Fund in accordance with Section 10.b. or the Final Remediation Cost Estimate; and (iv) promptly notify BUYER of the identification of the Release of Pollutants that was not Identified in BUYER's Environmental Assessment. If the Lease Termination Date has occurred, SELLER shall have access to perform the Additional Remediation pursuant to a Remediation Access Agreement, attached as **Exhibit 21.c.iv**.

iv. On the annual anniversary of the Closing, if SELLER is performing Additional Remediation, it shall deliver to BUYER a report on the progress of the Additional Remediation, which shall include the following: (i) identification of whether the Additional Remediation performed to date has met the Additional Remediation Schedule, including the Milestones, and an explanation for any deviation from the Additional Remediation Schedule; (ii) costs incurred to date for Additional Remediation; and (iii) anticipated costs needed to complete the Additional Remediation, with a basis for the estimate. During the performance of the Additional Remediation, SELLER shall: (i) promptly provide BUYER with a copy of all documents, including but not limited to the Governmental Confirmation and correspondence and reports, exchanged between SELLER and any Governmental Body about the performance of the Additional Remediation; and (ii) respond to reasonable requests for information from BUYER about the Additional Remediation.

v. The General Escrow Fund established in accordance with Section 10.b. shall be administered by the Escrow Agent pursuant to the General Escrow Agreement. In the event that SELLER elects to proceed under Section 21.c.ii.(1). in order to accomplish Additional Remediation, SELLER shall use reasonable, good-faith, diligent efforts to perform the Additional Remediation in accordance with the terms of this Agreement. If BUYER reasonably determines that SELLER is not proceeding diligently to perform the Additional Remediation so that it can receive the Governmental Confirmations within seven (7) years after BUYER's submittal of its Environmental Notice (subject to extension as set forth in

Section 21.c.iii or to a longer period for which BUYER, in its sole and absolute discretion, has provided its written consent) then BUYER shall deliver written notice thereof to SELLER setting forth sufficient information to allow SELLER to respond thereto, whereupon SELLER shall have thirty (30) days thereafter to deliver to BUYER a written response. In the event of a disagreement between the Parties after such delivery as to whether SELLER was diligently pursuing the Additional Remediation then, either SELLER or BUYER may initiate dispute resolution procedures as provided for in Section 20.

vi. If BUYER provides no Additional Remediation Notice to SELLER under Section 21.c.i. (or if the obligations under any such Additional Remediation Notice have been satisfied) and BUYER INDEMNIFIED PARTIES provide no Environmental Notices to SELLER (or any such indemnification claims have been satisfied) on or before the third anniversary of the applicable Lease Termination Date, and if Governmental Confirmations for all of the Additional Remediation to be performed by SELLER pursuant to Section 21.c.ii.1 have been issued by the end of such period for all of the Additional Remediation, subject to the terms of the Lease (if applicable) and the General Escrow Agreement, SELLER shall be entitled to receive any remaining amounts in the General Escrow Fund and the General Escrow Fund shall terminate. Notwithstanding the foregoing: (a) if substantially all (but not all) of the Additional Remediation has been completed, BUYER and SELLER shall use good-faith efforts to mutually agree to reduce the General Escrow Fund to an amount reasonably sufficient to cover the remaining costs of the Additional Remediation, but subject to the terms of the Lease (if applicable) and the General Escrow Agreement; and (b) other than as provided in clause (a) above, the General Escrow Fund shall not be terminated until the third (3rd) anniversary of the final Lease Termination Date.

d. BUYER agrees that prior to any sale or transfer by BUYER of all or a portion of the Premises containing levels of Pollutants above the applicable residential level set forth in Chapter 62-777 and Chapter 62-780, F.A.C. from and after the Closing, BUYER will record an Institutional Control against all or such portion of the Premises in favor of SELLER that will be binding upon and run with the land and will limit the use of all or such portion of the Premises to agricultural, commercial and industrial land uses, including, but not limited to, as classified by the NAICS and referenced in the Florida Department of Environmental Protection's Institutional Controls Procedures Guidance dated November 2004. Notwithstanding the foregoing, in the event that BUYER does not comply with the above, then BUYER shall be deemed to have breached its obligations under this subsection and SELLER shall have all rights and remedies provided under this Agreement as a result thereof.

e. Indemnification by SELLER. From and after the Closing Date, SELLER agrees to jointly and severally indemnify, defend, save, and hold harmless the Buyer Indemnified Parties from and against any and all Liabilities incurred or suffered by any Buyer Indemnified Party, as to which an Environmental Notice is made on or before the third anniversary of the Lease Termination Date, and arising out of (1) Direct Claims and Third Party Claims for an alleged violation of Environmental Law in connection with the Premises that existed on or before the Lease Termination Date and began on or after the date that SELLER acquired title to the Premises, except for any alleged violation of any Environmental Law arising out of Non-Point Source of Pollutants or Point Source of Pollutants Identified in the BUYER's Environmental Assessment, (2) a Non-Governmental, Unrelated Party Claim for Pollutant Liabilities, (3) a Third Party Claim for Offsite Environmental Liabilities, (4) a Third Party Claim for a Previously Unknown Pollutant Liability asserted against a Buyer Indemnified Party concerning all or part of the Premises after the Buyer Indemnified Party has transferred such Premises to a Person who is not an Affiliate of the Buyer Indemnified Party, or (5) Third Party Claims arising out of or related to SELLER's breach of, or failure to perform, its covenants and obligations in Section 21.e.ii.(1); provided, however, that, in each of subsections (1) through (5) above, in no event shall SELLER be obligated to indemnify, defend, save and hold harmless any Buyer Indemnified Party for Liabilities for Environmental Claims to the extent (and only to the extent) the Liabilities are caused by any negligence by Buyer Indemnified Parties.

f. Indemnification by BUYER. From and after the Closing Date, BUYER agrees, to the extent permitted by Law, to indemnify, defend, save and hold harmless SELLER Indemnified Parties from and against any and all Liabilities incurred or suffered by any SELLER Indemnified Party arising out of or related to (1) Third Party Claims arising out of or related to BUYER's breach of, or failure to perform, its covenants and obligations in Section 21.b., Section 21.e.ii.(2), or both, or (2) Third Party Claims arising out of or related to BUYER's change in use of the Premises from agricultural, except to the extent that the Liability arises out of Pollutants, Point Source of Pollutants and Non-Point Source of Pollutants not identified in Buyer's Environmental Assessment. SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, the legal authority to agree to the provisions of this Section 21.f.

g. Procedure for Indemnification.

i. Direct Claims. If an Indemnified Party should have a Direct Claim against an Indemnifying Party, the Indemnified Party shall deliver a Direct Claim Notice to the Indemnifying Party by certified mail with reasonable promptness following discovery of the facts and circumstances giving rise to the Direct Claim. The failure to give timely notice pursuant to this Section 21.g.i. shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually

prejudiced by such failure. The Indemnifying Party shall have 30 calendar days to respond in writing to the Indemnified Party regarding such Direct Claim Notice. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the claim described in the Direct Claim Notice, or does not respond to the Direct Claim Notice within such 30-day period, the Liabilities arising from the claim specified in such Direct Claim Notice shall be conclusively deemed a Liability of the Indemnifying Party and the Indemnifying Party shall pay the amount of such Liability to the Indemnified Party promptly following the final determination thereof. If the Indemnifying Party notifies the Indemnified Party that it disputes its liability for the matters described in the Direct Claim Notice, then the Indemnifying Party shall be deemed to dispute the claim, and the Parties shall proceed in good faith to resolve such dispute as provided in Section 20.

ii. Indemnification Procedure – Third Party Claims. The Parties agree that, if a Third Party Claim is made, the Indemnified Party will give a Third Party Claim Notice to the Indemnifying Party by certified mail within five (5) days of receipt of service of process if an Action has commenced or, in all other circumstances, within fifteen (15) days of receipt of written notice of such Third Party Claim. The failure to give timely notice pursuant to this Section 21.g.ii. shall not relieve the Indemnifying Party of its obligation to indemnify except to the extent the Indemnifying Party is actually prejudiced by such failure. The Indemnifying Party shall have 30 days to respond in writing to the Indemnified Party regarding such Third Party Claim Notice. If the Indemnifying Party provides written notice to Indemnified Party during that 30-day period that it disputes its liability for the matters described in the Third Party Claim Notice, then the Indemnifying Party shall be deemed to dispute the Third Party Claim, and the Parties shall proceed in good faith to resolve such dispute as provided in Section 20. If the Indemnifying Party notifies the Indemnified Party within such 30-day period that it does not dispute the Third Party Claim described in the Third Party Claim Notice, or does not respond to such Third Party Claim Notice, the Liabilities arising from the Third Party Claim will be conclusively deemed a Liability of SELLER and the Parties shall proceed with the following indemnification procedures.

iii. Subject to any Laws, privileges (including the attorney client privilege and joint defense privilege), rights and the trade secret protocol developed by SELLER, if applicable, the Indemnified Party shall make available to the Indemnifying Party and its counsel, accountants and other representatives at reasonable times and for reasonable periods, during normal business hours, all books and records of the Indemnified Party reasonably relating to any such claim for indemnification, and each Party hereunder will render to the other such assistance as it may reasonably require of the other in order to insure prompt and adequate defense of any Third Party Claim.

iv. Subject to applicable Laws and the further provisions of this Section 21, the Indemnifying Party shall have the right to defend, compromise, and settle any third-party Action in the name of the Indemnified Party to the extent that Indemnifying Party may be liable to the Indemnified Party in connection therewith.

v. If the Indemnifying Party notifies the Indemnified Party that the Indemnifying Party elects to assume the defense of a Third Party Claim, the Indemnifying Party shall not be liable to the Indemnified Party under this Section 21.g.v for any fees of other counsel or any other expenses with respect to the defense of such Third Party Claim, in each case incurred by the Indemnified Party in connection with the defense of such Third Party Claim other than as contemplated under this Section 21.g.v.

vi. If the Indemnifying Party elects to assume the defense of such Third Party Claim, the Indemnifying Party shall have the right to defend such Third Party Claim by all appropriate proceedings, which proceedings will be prosecuted by the Indemnifying Party. The Indemnifying Party shall have full control of such defense and proceedings, including settlement thereof; provided, however, that the Indemnifying Party shall not settle a Third Party Claim without the written consent of the Indemnified Party, which shall not be unreasonably withheld, unless (i) the relief consists solely of money damages and includes a provision where the plaintiff or claimant in the matter fully releases the Indemnified Party from all liability with respect thereto, and (ii) the settlement, compromise or discharge does not otherwise materially adversely affect the Indemnified Party. The Indemnified Party agrees to cooperate reasonably with the Indemnifying Party and its counsel in the compromise or settlement of, or defense against, any Third Party Claim and, if requested by the Indemnifying Party, the Indemnified Party will, at the sole cost and expense of the Indemnifying Party, cooperate with the Indemnifying Party and its counsel in contesting any Third Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third Party Claim in question, in making any counter claim against the Person asserting the Third Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates).

vii. Notwithstanding an election by the Indemnifying Party to assume the defense of such Third Party Claim, the Indemnified Party shall have the right to employ separate counsel to represent it in, but not control, the defense, investigation, settlement, or litigation of such Third Party Claim, but the fees and expenses of such counsel shall be at the Indemnified Party's sole cost and expense unless (x) the Indemnifying Party shall have authorized in writing the Indemnified Party to employ separate counsel at the Indemnifying Party's expense, or (y) if, in the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, a conflict or potential interest exists

between the Indemnifying Party and the Indemnified Party, or (z) if, the named parties to such Third Party Claim include both the Indemnifying Party and the Indemnified Party and the Indemnified Party determines in good faith, based on the written opinion of counsel to the Indemnified Party, which counsel shall be reasonably satisfactory to the Indemnifying Party, that the Indemnified Party may have defenses or counterclaims that are not available to the Indemnifying Party, or that are inconsistent with those available to the Indemnifying Party. In any event, the Indemnified Party and the Indemnifying Party and their counsel reasonably shall cooperate in the defense of any Third Party Claim subject to this **Section 21.g.vii** and keep such Persons informed of all developments relating to any such Third Party Claims, and provide copies to each other of all relevant correspondence and documentation relating thereto.

viii. If the Indemnifying Party, after receiving a Third Party Claim Notice, does not elect to defend such Third Party Claim within the time period specified herein or does not defend such Third Party Claim in good faith, the Indemnified Party shall have the right, in addition to any other right or remedy it may have hereunder, at the Indemnifying Party's expense, to control the defense or settlement of such Third Party Claim; provided, however, that (i) the Indemnified Party shall not have any obligation to do so; (ii) the Indemnified Party's defense of or participation in the defense of any such claim shall not in any way diminish or lessen the obligations of the Indemnifying Party under this **Section 21.g.viii**; and (iii) the Indemnified Party shall not settle, compromise or discharge, or admit any liability with respect to, any such Third Party Claim without the prior written consent of the Indemnifying Party (which consent will not be unreasonably withheld or delayed) and if the Indemnified Party does settle, compromise or discharge, or admit any liability with respect to any such Third Party Claim without the written consent of the Indemnifying Party, then the Indemnifying Party shall have no liability whatsoever, nor be bound in any way, in respect thereof.

h. Satisfaction of Indemnification Payments.

i. Subject to **Section 20.**, and except as otherwise mutually agreed, prior to paying any Third Party Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnified Party with a copy of a non-consensual, non-appealable, final judgment or decree, which has been entered after the matter has been fully and fairly litigated, that holds the Indemnified Party liable on such claim or, if the claim was not finally determined by a non-consensual, non-appealable judgment or decree, then the Indemnified Party must have received from the Indemnifying Party the written approval of the terms and conditions of the final settlement or compromise or other agreement that fully and finally determined the outcome, which written approval the Indemnifying Party

cannot unreasonably withhold. Except as otherwise mutually agreed, prior to paying any Direct Claim against which the Indemnifying Party is, or may be, obligated under this Agreement to indemnify an Indemnified Party, the Indemnified Party must first supply the Indemnifying Party with reasonable documentation of the amount of such Direct Claim.

ii. BUYER Indemnified Parties' indemnification claims shall be satisfied solely from the General Escrow Fund, which fund shall be replenished according to the terms of the General Escrow Agreement.

iii. If a BUYER Indemnified Party makes an indemnification claim against the General Escrow Fund, or if any BUYER Indemnified Party shall have the right to assume the defense of a Third Party Claim pursuant to **Section 21.g.iii.** or is entitled to receive the reasonable legal fees and expenses associated with a claim, all such amounts shall be exclusively advanced by or set-off against the General Fund until the General Escrow Fund is completely depleted in accordance with the General Escrow Agreement, and BUYER Indemnified Party and SELLER shall execute a joint written notice to the Escrow Agent, and otherwise cooperate with each other in obtaining any such funds.

i. Limitations on Indemnification. Notwithstanding the foregoing, to the extent permitted by Law, an Indemnified Party shall not be entitled to indemnification under **Sections 21.e, or 21.f.** for, and in no event shall the Indemnifying Party have any Liability to any Indemnified Parties for, and the Liabilities shall not include, loss of profits or other consequential damages or punitive damages all of which are hereby waived by BUYER (other than loss of profits or other consequential damages, incidental damages or punitive damages suffered by third persons for which legal responsibility is allocated to any Indemnified Party).

j. Insurance Recoveries. If any Liabilities related to a claim by an Indemnified Party are covered by one or more third party insurance policies held by such Indemnified Party and such Indemnified Party actually receives a full or partial recovery under such insurance policies, such Indemnified Party shall use such recovery to refund, within ten (10) Business Days, the aggregate amount of any payments (or, if such recovery is less than the aggregate amount of such payments, a portion thereof) actually received by such Indemnified Party from Indemnifying Party with respect to such Liabilities; provided, however, that such refund shall be net of (i) the amount of any costs incurred in collecting such insurance recovery, including the amount of any co-payment or deductible, and (ii) the amount of any premium increase in the next policy period of the applicable insurance policy or in a replacement insurance policy that results directly from the assertion of such claim, as determined by correspondence from the insurance carrier or insurance broker to the Indemnified Party, a copy of which shall have been provided to the Indemnifying Party. For the avoidance of doubt, the Parties agree that the existence of an insurance claim shall not require an Indemnified Party to pursue an insurance claim prior to making an

indemnification claim under this **Section 20**, but if an indemnification claim is made, the Indemnified Party must use commercially reasonable effort to prosecute available insurance claims.

k. Tax Consequences of Indemnification. The Parties agree to treat any indemnification payment made pursuant to this **Section 20** as an adjustment to the Purchase Price for all income or similar tax purposes to the extent permitted by Law.

l. Survival. The terms of this **Section 21**. shall survive the Closing or termination of this Agreement.

22. NO PERSONAL LIABILITY.

Notwithstanding anything to the contrary in this Agreement, to the extent permitted by Law, no present or future Affiliate of SELLER or BUYER, nor any present or future member, principal, shareholder, manager, officer, official, director, employee or agent of SELLER or BUYER (other than any such Person that is Party hereto), will be personally liable, directly or indirectly, under or in connection with this Agreement, or any document, instrument or certificate securing or otherwise executed in connection with this Agreement, or any amendments or modifications to any of the foregoing made at any time or times, heretofore or hereafter, or in respect of any matter, condition, injury or loss related to this Agreement or the Premises, and each of the Parties, on behalf if itself and each of its successors and permitted assignees, waives and does hereby waive any such personal liability.

23. TAX DEFERRED EXCHANGE.

BUYER and SELLER hereby acknowledge that SELLER may elect that all or a portion of the transaction contemplated by this Agreement may qualify as a tax-free exchange within the meaning of Section 1031 of the Code. BUYER agrees to take any further action commercially reasonable and appropriate to assist and cooperate with SELLER in effectuating such tax-free exchange; provided, however, SELLER hereby agrees that (a) SELLER shall pay directly for any additional expense caused to BUYER as a result of actions taken by BUYER for the purpose of facilitating such exchange, (b) BUYER's agreement to facilitate such exchange will not require it to take title to any property other than the Premises, and (c) SELLER shall reimburse, indemnify, defend and hold harmless BUYER from any liabilities resulting from BUYER's participation in such exchange for the benefit of SELLER.

24. NOTICES

Any notice, request, demand, instruction, or other communications to be given, provided or delivered to any Party hereunder, shall be in writing and shall be deemed to be delivered upon the earlier to occur of: (a) actual receipt if delivered by (i) hand, commercial courier or reputable overnight delivery service to the address indicated, (ii) facsimile

transmission, with confirmation of receipt or (iii) electronic transmission, if also sent by another alternative means of delivery named herein; or (b) the delivery by registered or certified United Stated Postal Service mail, return receipt requested, postage prepaid, addressed as follows:

If to BUYER:	South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 Attention: Executive Director and Chairman Fax: (561) 681-6233
With a copy to:	South Florida Water Management District 3301 Gun Club Road West Palm Beach, Florida 33406 Attention: General Counsel Fax: (561) 682-6447
	And
	Florida Department of Environmental Protection 3900 Commonwealth Blvd M.S. 49 Tallahassee, Florida 32399 Attention: Secretary, Department of Environmental Protection Fax: (850) 245-2128
If to SELLER:	c/o United States Sugar Corporation 111 Ponce de Leon Avenue Clewiston, Florida 33440 Attention: Malcolm S. (Bubba) Wade, Jr. and Edward Almeida, Esq. Fax: (863) 902-2120
With a copy to:	Gunster, Yoakley & Stewart, P.A. Attorneys At Law Las Olas Centre 450 East Las Olas Boulevard Suite 1400 Fort Lauderdale, Florida 33301-4206 Attention: Daniel M. Mackler, Esq. and Danielle DeVito Hurley, Esq. Fax: (954) 523-1722

The addresses for the purpose of this Paragraph may be changed by either Party by giving written notice of such change to the other Party in the manner provided herein. Attorneys

for the respective Parties to this Agreement may send and receive notices on their client's behalf.

25. EXCLUSIVITY; ACQUISITION PROPOSALS.

a. Certain Definitions. For purposes of this Agreement:

i. "Acquisition Proposal" means any written inquiry, proposal or offer from a Person or group of Persons other than SELLER and SELLER Representatives for, whether in one transaction or a series of transactions: (i) any direct or indirect sale or other disposition (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of the Premises, whether alone or together with other assets, or of any combination of assets that represents all or substantially all of the assets of any SELLER and its respective subsidiaries, taken as a whole; (ii) any issuance, sale or other disposition by PARENT (including by way of merger, consolidation, share exchange, business combination or any similar transaction) of securities representing more than 80% of the voting rights of PARENT'S outstanding common stock; (iii) any tender offer or exchange offer that if consummated would result in any Person or group of Persons acquiring beneficial ownership, or the right to acquire beneficial ownership of, more than 80% of the voting rights of PARENT'S outstanding common stock; (iv) any merger, reorganization, consolidation, share exchange, business combination, recapitalization, liquidation, dissolution, equity infusion or similar transaction involving SELLER and/or its respective subsidiaries; or (v) any transaction that is similar in form, substance or purpose to any of the foregoing transactions; provided, however, that the term "Acquisition Proposal" shall not include a Permitted Reorganization, the transactions contemplated by this Agreement, or any Additional Transaction.

ii. "Exclusivity Period" means the period beginning upon Validation and ending on the Closing Date or earlier termination of this Agreement in accordance with its terms.

iii. "Qualified Purchaser" means any Person or group of Persons that SELLER reasonably believes are capable of consummating a Superior Proposal.

iv. "Solicitation Period" means the period beginning on the Effective Date and ending at 5:00 P.M., Eastern Time, on the sixtieth (60^{th}) day thereafter.

v. "Alternative Acquisition Agreement" means a definitive purchase agreement, or series of related agreements, entered into, between any combination of PARENT and the SELLING SUBSIDIARIES and a Qualified Purchaser with respect to a Superior Proposal (together with any related schedules, exhibits or other documentation).

vi. "Matching Period" means the period beginning on the day BUYER has delivered a copy of an Alternative Acquisition Agreement in accordance with Section 25.d. below and ending forty (40) calendar days thereafter.

vii. "Termination Fee" means an amount in cash equal to Sixteen Million Dollars (U.S. $16,000,000.00) which, if due and payable under Section 25.e., shall be paid by wire transfer of immediately available funds denominated in U.S. Dollars to the account or accounts designated by BUYER. SELLER acknowledges that the agreement to pay the Termination Fee in the circumstances set forth in Section 25.e. is an integral part of the transactions contemplated by this Agreement and that, without this Agreement, BUYER would not enter into this Agreement; accordingly, if the Termination Fee is not paid when due, Buyer shall be entitled to interest on the Termination Fee at a rate per annum equal to the Prime Rate as published in the Wall Street Journal, Eastern Edition, in effect from time to time during the period from the date that the such payment was required to be made pursuant to this Agreement to the date of payment.

viii. "Superior Proposal" means any bona fide Acquisition Proposal made in writing that would be consummated on or before June 30, 2010 and that the Board of Directors of Parent in its good faith judgment determines would, if consummated, result in a transaction that is more favorable to Parent and its stockholders (as they exist immediately prior to consummating such transaction) than the transactions contemplated by this Agreement, which determination is made (A) after receiving the advice of a financial advisor, (B) after taking into account the likelihood (and likely timing) of consummation of such transaction on the terms set forth therein, and (C) after taking into account all appropriate legal, tax, financial (including the financing terms of such proposal), regulatory or other aspects of such proposal and any other relevant factors permitted by Law.

ix. "Additional Transaction" Any transaction or series of transactions between any Person or group of Persons and PARENT, its subsidiaries or any combination thereof, that does not preclude the sale of the Premises to BUYER and the granting to BUYER of the Option and Right of First Refusal to purchase the Option Property.

x. "Window-shop Period" means the period beginning upon expiration of the Solicitation Period and ending upon Validation.

b. Solicitation Period. Notwithstanding anything contained herein to the contrary, during the Solicitation Period, SELLER and the SELLER Representatives shall have the right to, directly or indirectly: (i) initiate, solicit and encourage Acquisition Proposals from any Person or Persons, including by way of providing access to non-public information pursuant to one or more confidentiality agreements; and (ii) enter into and maintain discussions or negotiations with respect to Acquisition Proposals or otherwise

cooperate with or assist or participate in or facilitate any such discussions or negotiations, including by delivering confidential information regarding any or all of SELLER, its business operations and its assets, including the Premises, to Persons submitting an Acquisition Proposal and their representatives; provided, however, that SELLER shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons solicited hereunder, the terms of which are not materially more favorable to such Person than those in the Confidentiality Letter that SELLER has entered into with BUYER, (ii) if, at any time SELLER identifies a Person or Persons from whom it has received an Acquisition Proposal to be a Qualified Purchaser, (A) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of making such determination) of the identity of such Qualified Purchaser; and (B) keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.

c. Window-shop Period. Notwithstanding anything contained herein to the contrary, during the Window-Shop Period, SELLER and the SELLER Representatives may continue discussions or negotiations with respect to Acquisition Proposals received from Persons solicited during the Solicitation Period, but SELLER will not and will cause SELLER Representatives and other Persons acting on its behalf not to, directly or indirectly initiate, seek or solicit any additional Acquisition Proposals. If, however, a Person or group of Persons approach SELLER or the SELLER Representatives, unsolicited, with an interest in submitting an Acquisition Proposal, and if PARENT'S Board of Directors determines in good faith, after consultation with its financial and legal advisors, that (1) such unsolicited Acquisition Proposal is bona fide and could reasonably be expected to result in a Superior Proposal, (2) such Person or group of Persons could reasonably be expected to be able to finance such Acquisition Proposal, and (3) the failure to consider the Acquisition Proposal would be inconsistent with the fulfillment of its fiduciary duties to the stockholders under applicable Law, then SELLER may (A) furnish information with respect to any or all of SELLER, its business operations and its assets, including the Premises, to the Person making such Acquisition Proposal and its representatives and (B) enter into and maintain discussions or negotiations with the Person making such Acquisition Proposal; provided, however, that Seller shall (i) enter into and maintain one or more customary confidentiality agreements with any Persons making an unsolicited Acquisition Proposal, the terms of which are not materially more favorable to such Person or Persons than those in the Confidentiality Letter that SELLER entered into with BUYER, (ii) notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of entering into such a confidentiality agreement) of the identity of the Person or Persons making the unsolicited Acquisition Proposal, and (iii) keep BUYER reasonably informed of the status of any discussions with any such Person or Persons. If, at any time SELLER identifies a Person or Persons from whom it has received an unsolicited Acquisition Proposal to be a Qualified Purchaser, SELLER agrees (A) to notify BUYER in writing as promptly as reasonably practicable (and in any event within twenty four (24) hours of making such determination) of the identity of such Qualified Purchaser and the determination of Qualified Purchaser status; and (B) to keep BUYER reasonably informed of the status of any discussions with any Qualified Purchaser.

d. Superior Proposal. If, prior to the Exclusivity Period, SELLER receives an Acquisition Proposal from any Qualified Purchaser(s) that the Board of Directors of PARENT concludes in good faith constitutes a Superior Proposal, any or all of PARENT and each other SELLER may enter into an Alternative Acquisition Agreement(s), except that the closing of any Superior Proposal evidenced by an Alternative Acquisition Agreement must be conditioned upon BUYER's failure to exercise its rights set forth in subparagraph (e) below and if such right is not exercised, BUYER's receipt of the payment of the Termination Fee pursuant to subparagraph (g) below and termination of this Agreement (without any cost, liability or obligation whatsoever to BUYER) as contemplated by subparagraph (e) below. SELLER (i) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within one (1) Business Day), make a true and complete copy thereof available for review by BUYER and BUYER's representatives, (ii) shall promptly upon entering into an Alternative Acquisition Agreement (and in any event within five (5) business days) make available to BUYER and its representatives any information concerning SELLER, its business operations and its assets, including the Premises, that has been provided by the Qualified Purchaser in connection with the Superior Proposal that has not previously been provided to BUYER, and (iii) shall not enter into any confidentiality provisions restricting the provision of such materials to BUYER. Any materials, including a term sheet, a letter of intent or definitive agreement, given to BUYER in connection with the Superior Proposal, (A) shall be designated "Trade Secret" by SELLER, (B) shall be subject to the trade secret protocol established by SELLER attached hereto as Schedule 6.a., and (C) shall be kept confidential by BUYER in accordance with the Confidentiality Letter.

e. Matching Period; Termination; and Termination Fee. During the Matching Period SELLER shall, and shall cause SELLER Representatives to, negotiate with BUYER in good faith (to the extent BUYER desires to negotiate) to make such adjustments in the terms and conditions of this Agreement so that the Acquisition Proposal provided for in the Alternative Acquisition Agreement ceases to constitute a Superior Proposal. If BUYER agrees to make adjustments in the terms and conditions of this Agreement such that PARENT's Board of Directors concludes that the Acquisition Proposal provided for in the Alternative Acquisition Agreement no longer constitutes a Superior Proposal, the Alternative Acquisition Agreement shall terminate (without any liability or obligation whatsoever to BUYER). If BUYER does not so agree during the Matching Period, SELLER may proceed with the transaction contemplated by the Alternative Acquisition Agreement, terminate this Agreement, and BUYER shall be entitled to payment of the Termination Fee, payable by wire transfer of immediately available funds. Any termination pursuant to this subsection (e) shall not constitute or serve as the basis for a breach of or default under this Agreement. The Termination Fee is the sole remedy available to BUYER in connection with a termination of this Agreement in accordance with the terms of this Section 25 and BUYER specifically waives its right to seek specific performance hereunder.

f. Exclusivity. From the date of Validation until the Closing or earlier termination of this Agreement in accordance with its terms, SELLER agrees that, except with respect to this Agreement and the transactions contemplated hereby, SELLER will not and will

cause the SELLER Representatives and other Persons acting on its behalf not to, directly or indirectly: (i) initiate, solicit or seek, entertain any inquiries or the making or implementation of any proposal or offer with respect to an Acquisition Proposal; (ii) engage in any discussions or negotiations concerning, or provide any confidential information or data to, or have any substantive discussion with, any Person relating to an Acquisition Proposal; (iii) otherwise cooperate with any Person in any effort or attempt to make, implement or accept any Acquisition Proposal; or (iv) enter into an agreement, contract, letter of intent, memorandum of understanding or confidentiality agreement with any Person relating to an Acquisition Proposal. SELLER agrees to notify Buyer promptly if it or any SELLER Representative or other Persons acting on its behalf receives, after the date of Validation, any written inquiries, offers or proposals relating to an Acquisition Proposal, and provide Buyer with the details thereof, keep BUYER informed with respect thereto, and provide BUYER with copies thereof.

g. Post-Termination Transaction. In the event SELLER terminates this Agreement because SELLER fails to obtain approval of PARENT'S stockholders for any reason, and if SELLER thereafter sells all or substantially all of the Premises or all or substantially all of the Option Property within a period of twelve (12) months following said termination, then BUYER shall be entitled to receive the Termination Fee. This subsection (g) shall survive the Closing.

h. Additional Transactions. Nothing in this **Section 25** shall limit SELLER'S right to engage in activities related to pursuing, negotiating, documenting and completing Additional Transactions. In no event shall the Termination Fee be payable to BUYER in respect of an Additional Transaction.

26. OPTION TO PURCHASE REAL PROPERTY

a. If the Closing occurs, then for (i) a period commencing from the Closing Date through the date that is immediately prior to third (3rd) anniversary thereof (the "Exclusive Option Period"), SELLER hereby grants to BUYER the exclusive option (the "Exclusive Option") and (ii) a period commencing on the third (3rd) anniversary of the Closing Date through the tenth (10th) anniversary thereof (the "Non-Exclusive Option Period"), SELLER hereby grants to BUYER, the non-exclusive option (the "Non-Exclusive Option") (the Non-Exclusive Option and the Exclusive Option, are hereinafter collectively referred to as the "Option", and the Exclusive Option Period and the Non-Exclusive Option Period are hereinafter collectively to as the "Option Period"), to purchase all (but not less than all) of that certain real property located in Hendry, Glades, and Palm Beach Counties, Florida as more particularly described on **Exhibit 26.a** attached hereto (the "Option Property"), which consists of approximately one hundred seven thousand one hundred eighty-seven (107,187) acres, more or less, subject to any and all leases for all or any portion of the Option Property then in effect at the time of exercise of such Option and subject to the New Lease (as defined in subsection j below). BUYER may exercise the Option at any time during the applicable Option

Period by giving SELLER written notice thereof ("Option Notice"). During the Exclusive Option Period, in no event shall SELLER sell, enter into new leases for (provided this shall not prohibit SELLER from reinstating any lease in order to resolve any tenant dispute), transfer or convey any portion of the Option Property without BUYER's written consent, which may be withheld in BUYER's sole and absolute discretion, provided, however, that: (i) SELLER may sell, transfer or convey all or substantially all of the Option Property during the Exclusive Option Period without BUYER's written consent, provided and on the condition that such property is sold subject to this Option (a "Permitted Sale"); (ii) SELLER may enter into agricultural leases during the Exclusive Option Period so long as the term of any such leases does not exceed three (3) years, or, if the lease term exceeds three (3) years, such lease must contain a waiver by the tenant of the relocation rights under the Uniform Relocation Assistance and Real Property Acquisition Policy Act of 1970, as amended (42 U.S.C. Sec. 4601, et seq.), and must be terminable upon two (2) years written notice, without payment or relocation benefits, provided such notice shall not be effective prior to the end of the 3rd anniversary of the commencement of such lease term; and (iii) SELLER may at all times finance and refinance the Option Property without BUYER's consent. During the Non-Exclusive Option Period, there shall be no restrictions on SELLER's ability to: (A) sell, transfer or convey all or any portion of the Option Property (subject to the Right of First Refusal); or (B) lease all or any portion of the Option Property (provided that SELLER will notify BUYER of its intention to enter into any such lease(s), but BUYER shall have no right to consent to or approve the same). For purposes of determining the land subject to the Option at any time, "Option Property" shall mean the property designated as such in Exhibit 26.a as of the Effective Date, excluding any lands which at the time of exercise of the Option by BUYER have been (i) sold, transferred or conveyed by SELLER in accordance with this Agreement (other than in connection with a Permitted Sale), (ii) acquired by BUYER in the exercise of the Right of First Refusal, (iii) excluded by BUYER under the Option Purchase Agreement (as defined below) in accordance with the title provisions thereof; or (iv) excluded as a result of failure, breach or default by SELLER or any other cause except BUYER's default.

b. The purchase price for the Option Property during the Exclusive Option Period shall be fixed at SEVEN THOUSAND FOUR HUNDRED DOLLARS AND NO/100 ($7,400) per acre and for the Non-Exclusive Option Period shall be determined as set forth below (the "Option Property Purchase Price") and the fair market rent for the Premises and Option Property to be paid under the New Lease (as defined below) (regardless of whether the Option is exercised during the Exclusive Option Period or Non-Exclusive Option Period) shall be determined as set forth below (collectively, the "Post Option Fair Market Rent").

c. If the Option is exercised during the Exclusive Option Period, then the Option Notice shall include an original, signed appraisal(s) dated within thirty (30) days of such notice setting forth BUYER's proposed Post Option Fair Market Rent for the Premises and Option Property ("Buyer's Proposed Post Option Fair Market

Rent"). The appraisal must comply with the statutorily mandated appraisal standards (applicable to BUYER) and must have been performed by an appraiser meeting the Appraiser Requirements set forth in **subsection f.iv** below (collectively, "Buyer's Appraisal").

d. If the Option is exercised during the Non-Exclusive Option Period, then the Option Notice shall include an original, signed Buyer's Appraisal(s) dated within thirty (30) days of such notice setting forth (i) BUYER's proposed Option Property Purchase Price ("Buyer's Proposed Option Property Purchase Price"), and (ii) Buyer's proposed Post Option Fair Market Rent for the Premises and Option Property.

e. Within sixty (60) days after receipt of Buyer's Appraisal that is included in the Option Notice, SELLER shall elect to either: (i) as applicable, accept Buyer's Proposed Option Property Purchase Price as the Option Property Purchase Price and/or Buyer's Proposed Post Option Fair Market Rent as the Post Option Fair Market Rent; and/or (ii) as applicable, deliver to BUYER an original, signed appraisal(s) setting forth SELLER's proposed Option Property Purchase Price ("Seller's Proposed Option Property Purchase Price") and/or SELLER's proposed Post Option Fair Market Rent ("Seller's Proposed Post Option Fair Market Rent"), which appraisal(s) must be performed by an appraiser(s) meeting the Appraiser Requirements set forth below in **subsection f.iv below** and must be dated within sixty (60) days of SELLER's receipt of BUYER's Option Notice (including Buyer's Appraisal) (collectively, "Seller's Appraisal").

f. If SELLER elects to obtain Seller's Appraisal under **subsection e(ii)** above, then, as applicable:

i. With respect to the determination of the Option Property Purchase Price:

(1) In the event Seller's Proposed Option Property Purchase Price is more than or equal to ninety percent (90%) of and less than or equal to one hundred ten percent (110%) of Buyer's Proposed Option Property Purchase Price, then the Option Property Purchase Price shall be deemed to be the average of Buyer's Proposed Option Property Purchase Price and Seller's Proposed Option Property Purchase Price (i.e., the sum of both proposed purchase prices divided by two (2)).

(2) In the event Seller's Proposed Option Property Purchase Price is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of Buyer's Proposed Option Property Purchase Price, then within fifteen (15) days after SELLER's delivery of Seller's Appraisal to BUYER setting forth Seller's Proposed Option Property Purchase Price, Seller's appraiser and Buyer's appraiser must select a third (3rd) appraiser meeting the Appraiser Requirements set forth below (the "Third Appraiser") (it being

agreed that the Third Appraiser may be different for the purchase price and rental appraisals).

ii. With respect to the determination of the Post Option Fair Market Rent:

(1) In the event Seller's Proposed Post Option Fair Market Rent is more than or equal to ninety percent (90%) of and less than or equal to one hundred ten percent (110%) of Buyer's Proposed Post Option Fair Market Rent, then the Post Option Fair Market Rent shall be deemed to be the average of Buyer's Proposed Post Option Fair Market Rent and Seller's Proposed Post Option Fair Market Rent (i.e., the sum of both proposed rents divided by two (2)).

(2) In the event Seller's Proposed Post Option Fair Market Rent is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of Buyer's Proposed Post Option Fair Market Rent, then within fifteen (15) days after SELLER's delivery of Seller's Appraisal to BUYER setting forth Seller's Proposed Post Option Fair Market Rent, Seller's appraiser and Buyer's appraiser must select the Third Appraiser (if not already appointed pursuant to subsection (i)(2) above).

iii. The Third Appraiser shall perform its appraisal of its proposed Option Property Purchase Price and/or its proposed Post Option Fair Market Rent, as applicable, within sixty (60) days of being selected by Seller's appraiser and Buyer's appraiser. Once such appraisal is complete, the average of the two (2) closest appraisals in terms of total appraised value of the Option Property Purchase Price and/or the Post Option Fair Market Rent, as applicable, shall be deemed to be the Option Property Purchase Price and/or the Post Option Fair Market Rent, respectively.

iv. Unless otherwise agreed to in writing by SELLER and BUYER, each of the appraisers set forth above shall be M.A.I. certified appraisers, having at least ten (10) years experience in appraising the fair market value and fair market rental (as applicable) of agricultural property in Palm Beach County, Florida (the "Appraiser Requirements").

v. BUYER and SELLER shall each be responsible for the fees, costs and expenses of their respective appraiser(s). The fees, costs and expenses of the Third Appraiser and any mediation to select the same as provided in subsection (j) below shall be shared equally by BUYER and SELLER.

vi. After the initial determination of the Post Option Fair Market Rent, such rent shall be adjusted to fair market value on every third anniversary of the closing under the Option Purchase Agreement and in the intervening years

such rent shall be adjusted in accordance with procedure set forth in the Lease.

g. Notwithstanding anything contained herein to the contrary:

i. if the Option is exercised during the Non-Exclusive Option Period and the Option Property Purchase Price as determined above is less than an average of SEVEN THOUSAND FOUR HUNDRED DOLLARS AND NO/100 ($7,400.00) per acre, SELLER shall have the right, in SELLER's sole and absolute discretion, to not sell the Option Property to BUYER without any obligation or liability whatsoever to SELLER by providing written notice to BUYER of such election within sixty (60) days after the Option Property Purchase Price has been determined, whereupon the Option shall continue to be in effect until the expiration of the Option Period; it being agreed that failure of SELLER to deliver such notice within the 60-day period shall be deemed to be an acceptance of the Option Property Purchase Price; and

ii. if the Option is exercised during the Non-Exclusive Option Period and the Option Property Purchase Price as determined above is greater than the Buyer's Proposed Option Property Purchase Price, BUYER shall have the right, in BUYER's sole and absolute discretion, to not purchase the Option Property from SELLER without any obligation or liability whatsoever to BUYER by providing written notice to SELLER of such election within sixty (60) days after the Option Property Purchase Price has been determined, whereupon the Option shall automatically and immediately become null and void and neither party hereto shall have any other liability, obligation, or duty pursuant to the Option, it being agreed that failure of BUYER to deliver such notice within the 60-day period shall be deemed to be an acceptance of the Option Property Purchase Price.

h. If SELLER's appraiser and BUYER's appraiser fail to appoint the Third Appraiser within the time and in the manner prescribed in subsection (f)(i)(2) or f(ii)(2) above, then SELLER and/or BUYER shall promptly apply to the Palm Beach County office of Mediation, Inc. (or if such company is no longer in business, another mediation company with offices in Palm Beach County) for the appointment of the Third Appraiser. Within five (5) days of receipt of notice from one Party that such mediation application has been filed, each Party shall submit the names of up to three (3) appraisers meeting the Appraisal Requirements for the mediator to select. The mediator shall be instructed by either Party to select the Third Appraiser within ten (10) days after receipt of such names. The failure of a Party to timely submit any names constitutes a waiver of the right to so submit such names and the mediator shall select the Third Appraiser from the list of names that was timely submitted.

i. In the event the BUYER does not exercise the Option during the Option Period as provided in this Section 26, the Option shall automatically and immediately without notice become null and void and neither Party hereto shall have any other liability, obligation, or duty pursuant to the Option. In the event that BUYER does exercise the Option during the Option Period as provided in this Section 26 and the transaction fails to close for any reason whatsoever, other than SELLER's default, then the Option shall automatically and immediately without notice become null and void and neither Party hereto shall have any other liability, obligation, or duty pursuant to the Option. In the event that the Option is exercised and the transaction fails to close as a result of SELLER's default under this Agreement or the Option Purchase Agreement, as applicable after the expiration of any applicable cure period, and provided BUYER is not in default under this Agreement or the Option Purchase Agreement, as applicable, after the expiration of any applicable cure period, then, without limitation as to any of BUYER's or SELLER's remedies under this Agreement or the Option Purchase Agreement, as applicable, the Option shall survive, and the Right of First Refusal shall also be deemed to have been reinstated as if the Option were not exercised, all in accordance with the terms of this Agreement.

j. In the event the BUYER exercises the Option as provided for herein, then, within sixty (60) days after exercise of the Option during the Exclusive Option Period or within sixty (60) days after the Option Purchase Price has been determined in accordance with subsection c, if the Option is exercised during the Non-Exclusive Option Period, or such other period of time mutually agreed upon in writing by the Parties, both Parties agree to execute an "Agreement for Sale and Purchase" in substantially the same form and content as this Agreement with appropriate modifications to pertinent terms including, but not limited to (i) the inclusion of a ninety (90) day inspection period consistent with Section 19.b of the Original Agreement as it existed on December 29, 2008, (ii) a closing date to occur one hundred twenty (120) days following expiration of the inspection period, (iii) pro-rata adjustments to the amount for Curable Title Defects, the amount for the General Escrow Fund, and the payment amount in exchange for BUYER's Remediation of Pollutants per Section 21.b. of this Agreement (which adjustments shall be made using the same per acre calculations utilized by the Parties in order to modify the amounts set forth in the Original Agreement), (iv) appropriate modifications to the representations and warranties to conform the same to then existing facts, as applicable, all of which shall be in form and content reasonably acceptable to SELLER and BUYER (such agreement shall be referred to as the "Option Purchase Agreement") and (v) an exhibit which contains an amendment to the Lease which adds the Option Property to the "Premises" between BUYER, as lessor, and SELLER, as lessee, or, at SELLER's election, (x) a separate lease for the Option Property and an amendment to the Lease which reflects the change in rent and other modifications as contemplated in this Agreement or (y) a consolidated Lease for the Option Property and the Premises, which shall be in substantially the same form and content as the Lease (such amendments and/or new lease referred in clauses (x) and (y) is collectively

referred to as the "New Lease"), it being agreed that the New Lease shall contain the modifications to the Lease set forth on **Exhibit 26.j** and shall be executed and delivered by the Parties at the closing of the Option Property. It is further agreed by the Parties that SELLER's option to elect the form of the New Lease under clauses (x) or (y) above is nevertheless subject to BUYER's right to elect the form under clause (x), if such election is necessary for SELLER's financing to acquire the Option Property.

k. In the event, after BUYER's exercise of the Option, the Parties fail to enter into an Option Purchase Agreement within 180 days after the Option Property Purchase Price has been determined as provided above and neither Party has commenced an action against the other to enforce the terms of this Section 26 during said 180 day period, the Option shall automatically and immediately without notice become null and void.

l. BUYER hereby represents that as of the Effective Date, it has no present intention to initiate or commence eminent domain of any or all of the Premises or Option Property. BUYER hereby agrees that in the event that: (a) during the Option Period, BUYER initiates or commences any taking for public or quasi-public use pursuant to the power of eminent domain of any or all of the Option Property or any interest therein (the "Taking Proceeding"); and (b) BUYER does not cease the Taking Proceeding within forty-five (45) days after written notice from SELLER, then the Option shall be deemed to have been automatically exercised by BUYER with respect to any portion of the Option Property not being so taken by eminent domain unless SELLER gives written notice within five (5) business days after the expiration of such 45-day notice period that SELLER has elected to terminate the Option, it being agreed by the Parties that SELLER's election to terminate the Option shall be in addition to all other rights and remedies available to SELLER at law, in equity or under this Agreement as a result of BUYER's breach of this subparagraph. If at any time prior to the expiration of the Option Period, any proceedings shall be commenced for the taking of all of the Option Property or any material portion thereof or any interest therein, for public or quasi-public use pursuant to the power of eminent domain by any public or quasi-public agency (other than BUYER), SELLER shall furnish BUYER with written notice of any proposed condemnation within five (5) business days after SELLER's receipt of such notification, and, in such event, the Option shall automatically terminate as to any such portion of or interest in the Option Property being taken by eminent domain and thereafter neither BUYER or SELLER shall have any further rights or obligations hereunder with respect to such portion of or interest in the Option Property except as otherwise expressly provided herein. In the event of a taking described in the immediately preceding sentence, BUYER shall not, during the Option Period, use or take title to all or a portion of or interest in the Option Property that is so taken, unless BUYER exercises the Option for any remaining acreage of the Option Property not so taken within forty-five (45) days after receipt of written notice from SELLER advising BUYER that it may not use or take title to all or a portion of or interest

in the Option Property that is so taken. Notwithstanding the foregoing, nothing contained herein shall require BUYER to exercise (or have been deemed to have automatically exercised) the Option with respect to a taking by eminent domain of less than 1,000 acres (in the aggregate) of the Option Property or any interest therein. SELLER acknowledges that BUYER has not made any representation or warranty to SELLER as to, nor has BUYER waived any right to claim that it does not have, legal authority to agree to the provisions of this Section 26(f).

m. Between the fourth (4^{th}) and fifth (5^{th}) anniversary of the Closing Date, BUYER and SELLER shall meet to discuss, without prejudice to BUYER's rights hereunder, BUYER's intent concerning the exercise of the Option.

n. In no event shall the provisions of this Section 26 (i.e., the Option) be assigned by BUYER, other than to The Board of Trustees of the Internal Improvement Trust Fund ("TIITF") which assignment, in order to be effective, must be delivered to SELLER and include an assumption by TIITF, all in form and substance reasonably acceptable to SELLER.

o. The provisions in this Section 26 shall survive the Closing.

27. RIGHT OF FIRST REFUSAL.

a. Subject to Section 27.e below, if at any time during the Non-Exclusive Option Period, SELLER desires to sell any or all of its fee simple interest in the Option Property (which sale may also include other assets of SELLER) to any Person who, as of the Effective Date, is unaffiliated with SELLER (for purposes of this Section, the "Proposed Purchaser"), and has received a bona fide written offer from, or otherwise has negotiated acceptable terms with, such Proposed Purchaser (for purposes of this Section, the "Bona Fide Offer") to purchase such real property and, to the extent included in the Bona Fide Offer, other assets of SELLER (for purposes of this Section such real property and other assets of SELLER that are included in the Bona Fide Offer are collectively referred to herein as the "Offered Option Property") from SELLER, SELLER shall submit a written offer (the "Offer") to sell all, but not less than all, of such Offered Option Property to BUYER on terms and conditions, including price, not less favorable to the BUYER than those on which the SELLER proposes to sell such Offered Option Property to the Proposed Purchaser. The Offer shall disclose the identity of the Proposed Purchaser (if any), the Offered Option Property proposed to be sold and the terms and conditions, including price, of the proposed sale, and shall be accompanied by a copy of the Bona Fide Offer, together with any information concerning the Offered Option Property that has been provided by SELLER to the Proposed Transferee, or by the Proposed Transferee to SELLER, in connection with the Bona Fide Offer that has not previously been provided to BUYER, all of which may be designated "Trade Secret" by SELLER and shall be kept confidential by BUYER in accordance with the Confidentiality Letter. The Offer shall further state that BUYER may acquire the Offered Option Property

for the price and upon the terms and other conditions of the proposed sale to the Proposed Purchaser as set forth in the Bona Fide Offer. As used in this Section, the term "Person" shall be construed broadly and shall include, but not be limited to, an individual, a partnership, a corporation, an association, a joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a governmental entity or any department, agency or political subdivision thereof. BUYER's rights under this Section 27 are herein referred to as the "Right of First Refusal"). Notwithstanding anything in this Agreement to the contrary, in no event shall the Right of First Refusal be applicable to the sale of any of SELLER's other assets (i.e., other than the Option Property), unless such other assets are included together with all or any portion of the Option Property under the Bona Fide Offer.

b. If BUYER desires to exercise its Right of First Refusal and purchase the Offered Option Property, BUYER shall deliver a written notice of its exercise of its Right of First Refusal to purchase such Offered Option Property pursuant to the terms of the Offer to SELLER within forty (40) calendar days of the date of receipt by BUYER of the Offer. If BUYER does not timely deliver such written notice of exercise of its Right of First Refusal, then BUYER shall be deemed to have waived its Right of First Refusal with respect to such Offer and, without limiting the effectiveness of the foregoing wavier, BUYER shall, upon request of SELLER, promptly deliver to SELLER a written waiver of its rights under this Section in recordable form with respect to such Offered Option Property, and, if BUYER does not provide such waiver within ten (10) days after request, then SELLER, in addition to all other rights and remedies it may have, may solely execute and record such waiver, which shall be as effective as if BUYER executed the same.

c. The closing of the sale of Offered Option Property to the BUYER pursuant to this Section shall be made at the offices of SELLER on such date as may be agreed by the SELLER and the BUYER (but in no event later than the later of one hundred fifty (150) days following BUYER's notice of exercise of its Right of First Refusal as provided in subsection b above or the closing date specified in the Offer). Such sale shall be effected by the SELLER's delivery to the BUYER of commercially reasonable documentation that is necessary to evidence the transfer and conveyance of the Offered Option Property to be purchased by the BUYER and the payment to the SELLER of the purchase price in immediately available funds (or other mutually acceptable arrangement).

d. If BUYER declines to purchase the Offered Option Property or fails to respond to the Offer in a timely manner as prescribed above, the Offered Option Property may be sold by the SELLER in accordance with the terms of the Bona Fide Offer free and clear of the Option set forth in Section 26 above and the "Right of First Refusal" set forth in this Section 27, both of which shall be deemed to be terminated with respect to such Offered Option Property. Any such sale shall be only to the Proposed Purchaser or its assignee (to the extent the Bona Fide Offer

permits such assignment), at not less than the price and upon other terms and conditions, if any, not more favorable to the Proposed Purchaser than those specified in the Offer. Promptly after completing the sale to the Proposed Purchaser or its assignee, the SELLER shall provide notice of such sale to the BUYER. Any Offered Option Property not sold pursuant to the Bona Fide Offer shall again be subject to this Right of First Refusal. In no event shall any sale, transfer or conveyance of any portion of the Option Property not in accordance with this Agreement be deemed to cause a waiver of the Option or Right of First Refusal.

e. Intentionally Deleted.

f. The provisions of this Section 27 shall terminate from and after BUYER's exercise of the Option in accordance with Section 26.

g. The provisions of this Section 27 shall expire upon the expiration or termination of the Option.

h. In no event shall the provisions of this Section 27 (i.e., the "Right of First Refusal") be assigned by BUYER, other than to TIITF, which assignment, in order to be effective, must be delivered to SELLER and include an assumption by TIITF, all in form and substance reasonably acceptable to SELLER.

i. The provisions in this Section 27 shall survive the Closing.

28. MISCELLANEOUS

a. Headings. The headings contained in this Agreement are for convenience of reference only, and are not to be considered a part hereof and shall not limit or otherwise affect in any way the meaning or interpretation of this Agreement.

b. Severability. If any provision of this Agreement or any other Agreement entered into pursuant hereto is contrary to, prohibited by or deemed invalid under applicable law or regulation, such provision shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid, but the remainder hereof shall not be invalidated thereby and shall be given full force and effect so far as possible. If any provision of this Agreement may be construed in two or more ways, one of which would render the provision invalid or otherwise voidable or unenforceable and another of which would render the provision valid and enforceable, such provision shall have the meaning which renders it valid and enforceable.

c. Third Parties. Unless expressly stated herein to the contrary, nothing in this Agreement, whether express or implied, is intended to confer any

rights or remedies under or by reason of this Agreement on any persons other than the parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any party to this Agreement.

d. Jurisdiction and Venue. The parties acknowledge that a substantial portion of negotiations and anticipated performance and execution of this Agreement occurred or shall occur in Palm Beach County, Florida, and that, therefore, each of the parties irrevocably and unconditionally (1) agrees that any suit, action or legal proceeding arising out of or relating to this Agreement may be brought in the courts of record of the State of Florida in Palm Beach County or the court of the United States, Southern District of Florida; (2) consents to the jurisdiction of each such court in any suit, action or proceeding; (3) waives any objection which it may have to the laying of venue of any such suit, action or proceeding in any of such courts; and (4) agrees that service of any court paper may be effected on such party by mail, as provided in this Agreement, or in such other manner as may be provided under applicable laws or court rules in said state.

e. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile copy of this Agreement and any signatures hereon shall be considered for all purposes as originals.

f. Governing Law. This Agreement and all transactions contemplated by this Agreement shall be governed by, construed, and enforced in accordance with, the internal laws of the State of Florida without regard to principles of conflicts of laws.

g. Interpretation. This Agreement shall be interpreted without regard to any presumption or other rule requiring interpretation against the party causing this Agreement or any part thereof to be drafted.

h. Handwritten Provisions. Handwritten provisions inserted in this Agreement and initialed by the BUYER and the SELLER shall control all printed provisions in conflict therewith.

i. Entire Agreement. This Agreement and the Confidentiality Letter (which is incorporated by reference herein) contains the entire agreement between the parties pertaining to the subject matter contained in it and supersedes all prior and contemporaneous agreements, representations and understandings of the parties. No agreements or representations, unless incorporated in this Agreement shall be binding upon any of the parties.

No modification or change in this Agreement shall be valid or binding upon the parties unless in writing and executed by the party or parties intended to be bound by it.

j. Waiver. Failure of BUYER to insist upon strict performance of any covenant or condition of this Agreement, or to exercise any right herein contained, shall not be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right; but the same shall remain in full force and effect.

k. Time. Time is of the essence with regard to every term, condition and provision set forth in this Agreement. Time periods herein of less than six (6) days shall in the computation exclude Saturdays, Sundays and state or national legal holidays, and any time period provided for herein which shall end on Saturday, Sunday or a legal holiday shall extend to 5:00 p.m. (E.S.T.) of the next business day.

l. WAIVER OF JURY TRIAL. AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, BUYER AND SELLER HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS **SECTION 28.l**.

m. Successors in Interest. This Agreement shall be legally binding upon the Parties hereto and their heirs, legal representatives, successors and permitted assigns. This Agreement may not be assigned by either Party, without the other Party's prior written consent, which may be withheld in their sole and absolute discretion; provided, however, that (i) SELLER may assign all of their rights and obligations under this Agreement to a Person(s) who is controlled by stockholders who currently control more than 50% of the voting rights of Parent's outstanding stock pursuant to a Permitted Reorganization or to a Person(s) that acquire(s) all or substantially all of the assets of SELLER other than the citrus facility comprising approximately 500 acres) (subject to the Option and Right of First Refusal, to the extent still in effect); (ii) BUYER may collaterally assign all or a part of its interest in this Agreement and its rights hereunder

and thereunder to the lenders of any third party financing necessary to consummate the transactions contemplated hereby to the extent required by such funding sources, and (iii) BUYER may assign all or a part of its interest in this Agreement and its rights and obligations hereunder or thereunder to any governmental agency organized under the laws of the State of Florida, provided that such assignment will not extend the Closing Date. For purposes hereof, a "Permitted Reorganization" means a merger, consolidation or other capital reorganization or business combination transaction of the Parent with or into another Person such that: (1) the stockholders of Parent immediately prior to such transaction possess at least fifty percent (50%) of the voting power of such Person immediately after such transaction or (2) members of the board of directors of the Parent immediately prior to such transaction possess majority voting power of the board of directors of such Person immediately after such transaction, provided that in the event of (1) and (2) above, the surviving entity and its subsidiaries shall own all or substantially all of the assets of SELLER.

n. Lead Warning Statement. Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards from risk assessments or inspections in the seller's possession and notify the buyer of any known lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. SELLER hereby advises BUYER that SELLER believes that there may be lead-based paint and/or lead-based paint hazards in residential structures that are being conveyed to BUYER in this transaction, however, SELLER has no reports or records pertaining to the same. By execution of this Agreement, BUYER acknowledges that it has received a ten-day opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazard and BUYER has received the pamphlet "Protect Your Family from Lead in Your Home".

o. Memorandum of Agreement. The Parties shall execute and deliver at Closing a "Memorandum of Agreement," in form and substance substantially similar to the document attached hereto as **Exhibit 28.o**, which shall be recorded in the public records of the applicable Counties memorializing the Option and the Right of First Refusal set forth in this Agreement, which shall be recorded at the cost and expense of BUYER; it

being understood and agreed that such Memorandum of Agreement shall be: (i) at all times subject and subordinate to any and all mortgages, deeds of trust, trust indentures, or other instruments evidencing a security interest upon the Option Property, which may now or hereafter affect any portion of the Option Property (subject, nonetheless to SELLER's obligation under the Option Purchase Agreement to satisfy or discharge any such instrument upon the closing of the acquisition of the Option Property by BUYER); (ii) during the Exclusive Period, subject and subordinate to the leases permitted under the terms of this Agreement (whether of record or not) and other matters of record entered into from and after the Closing, all as to the Option Property, and (iii) during the Non-Exclusive Period, subject and subordinate to any and all leases (whether of record or not) and other matters of record entered into from and after the commencement of such Non-Exclusive Period, all as to Option Property. Without limiting the automatic effectiveness of the foregoing subordination, within forty-five (45) days after written request by SELLER, BUYER hereby agrees to execute and deliver a subordination agreement, in form and substance reasonably acceptable to BUYER and SELLER, evidencing such subordination; provided, however that at Closing, BUYER shall execute and deliver such a subordination agreement in favor of SELLER's then current lender possessing a security interest in the Option Property in form and substance reasonably acceptable to BUYER, SELLER and SELLER's lender.

IN WITNESS WHEREOF, this Agreement has been executed by the Parties hereto as of the date first written above.

SELLERS:

UNITED STATES SUGAR CORPORATION, a Delaware corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker

By: Robert H. Buker Jr.
Name: ROBERT H. BUKER JR.
As its: PRESIDENT & CEO
Date of Execution MAY 11, 2009

SBG FARMS, INC., a Florida corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker

By: Robert H. Buker Jr.
Name: ROBERT H. BUKER JR.
As its: PRESIDENT
Date of Execution MAY 11, 2009

SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation

Witness: EDWARD ALMEIDA

Witness: Kay Brasecker

By: R. A. K.
Name: RICKE A. KRESS
As its: PRESIDENT
Date of Execution MAY 11, 2009

ATTEST: BOARD OF GOVERNING DISTRICT • STATE OF FLORIDA SEAL SOUTH FLORIDA WATER MANAGEMENT DISTRICT Established 1949

Secretary/District Clerk

BUYER:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation created under Chapter 373, Florida Statutes

By:
Name: Eric Buermann
As Its: Chairman
Date of Execution May 13, 2009

[JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC. FOLLOWS]

JOINDER OF SOUTH CENTRAL FLORIDA EXPRESS, INC.

The undersigned, on behalf of SOUTH CENTRAL FLORIDA EXPRESS, INC., a Florida corporation, hereby joins in and agrees to Section 19.j. of the Agreement for Sale and Purchase dated 5/09 by and among United States Sugar Corporation, SBG Farms, Inc., Southern Gardens Groves Corporation, collectively, as Seller, and South Florida Water Management District, as Buyer.

Witness: _____
EDWARD ALMEIDA

Witness: _____
Kay Brasecker

SOUTH CENTRAL FLORIDA EXPRESS, INC., a Florida corporation

By: _____

Name: MALCOLM S. WADE, JR

As its: PRESIDENT

Date of Execution MAY 11, 2009

LEASE AGREEMENT

BETWEEN

SOUTH FLORIDA WATER MANAGEMENT DISTRICT

AND

UNITED STATES SUGAR CORPORATION AND EACH OTHER LESSEE NAMED BELOW

This **LEASE AGREEMENT** (this "**LEASE**"), is entered into BETWEEN (herein called the "**Parties**" and each a "**Party**"): the SOUTH FLORIDA WATER MANAGEMENT DISTRICT, a public corporation of the State of Florida, with its principal office at 3301 Gun Club Road, West Palm Beach, Florida 33406, and whose mailing address is Post Office 24680, West Palm Beach Florida 33416-4680, as **LESSOR** ("**LESSOR**"); and each of the following, as **LESSEE**: UNITED STATES SUGAR CORPORATION, a Delaware corporation (the "**Parent**"), and SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation (the foregoing Parent and other Persons named as **LESSEE**, individually and collectively and jointly and severally, "**LESSEE**"), all with a mailing address of 111 Ponce DeLeon Avenue, Clewiston, Florida 33440.

WITNESSETH:

WHEREAS, the **LESSOR** is an agency of the State of Florida created by the Florida Legislature and given those powers and responsibilities enumerated in Chapter 373, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to enter into contracts with public agencies, private corporations or other persons, pursuant to Section 373.083, Florida Statutes.

WHEREAS, the **LESSOR** is empowered to lease lands or interests in land, to which the **LESSOR** has acquired title, pursuant to Section 373.093, Florida Statutes.

WHEREAS, LESSEE, as seller, and **LESSOR,** as buyer, have entered into that certain Amended and Restated Agreement for Sale and Purchase dated as of [*___*] (the "Agreement for Sale and Purchase") for certain real property located in Hendry, Glades, and Palm Beach Counties, Florida, as described therein (the "Purchased Premises"). Unless otherwise defined herein, all capitalized terms used in this **LEASE** shall have the meanings assigned to the same in the Agreement for Sale and Purchase.

WHEREAS, concurrently herewith and pursuant to the Agreement for Sale and Purchase, **LESSOR** has acquired the Purchased Premises, which includes, among other real property, the real property described in **Exhibit "A"** attached hereto (the "Premises").

WHEREAS, pursuant to the Agreement for Sale and Purchase, **LESSOR** has agreed to lease the Premises to **LESSEE** for the Permitted Uses (as defined in **Paragraph 2.B.**) subject to the terms and conditions set forth herein and **LESSEE** has represented to **LESSOR** that it is qualified in all respects to operate the Premises under the Permitted Uses.

WHEREAS, the Governing Board of **LESSOR,** at its 2009, meeting has authorized entering into this **LEASE** with **LESSEE.**

WHEREAS, the Board of Directors of Parent, at its [*_____*], 2009, meeting has duly authorized each **LESSEE** entering into this **LEASE** with **LESSOR.** [**NOTE: *depending on the final financing structure, revisions to the recitals to clarify the structure may be added.*** **]

NOW THEREFORE, in consideration of the duties, responsibilities, obligations and covenants herein contained to be kept and performed by the **LESSEE,** the **LESSOR** does hereby lease to the **LESSEE** the Premises in accordance with the following terms, conditions, covenants and provisions:

1. **Recitals:** The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. **Use of Premises:**

A. [**TO BE INSERTED IN SUGAR LEASE ONLY– **LESSOR** and **LESSEE** acknowledge that none of the crops (e.g., sugar cane), crop products or cane stubble are owned by **LESSOR** but shall be continued to be owned by **LESSEE;** provided however that any cane stubble existing on the Premises, as of the Expiration Date (as defined below) shall become the property of **LESSOR** in accordance with Paragraph 22).**] OR [**TO BE INSERTED IN CITRUS LEASE ONLY– **LESSEE** and **LESSOR** acknowledge that (i) all citrus trees and groves are owned by **LESSOR** and **LESSEE** is, pursuant to this **LEASE,** entitled only to the fruit and (ii) none of the crops (e.g., citrus fruit) or crop products are owned by the **LESSOR****]. **LESSEE** may utilize the Premises solely for the Permitted Uses in accordance with the terms, conditions, covenants and provisions of this **LEASE. LESSEE** will not use or permit any use or entry upon the Premises for any other purpose. **LESSEE's** use of the Premises for the Permitted Uses shall be in accordance with the Best Management Practices (as defined below) and consistent with the industry standards. The Premises, including the improvements located thereon are being leased in their "AS IS", "WHERE IS" and "WITH ALL FAULTS" condition. **LESSEE** has examined the Premises to its complete and total satisfaction and is familiar with the condition thereof, and accepts the same in their present condition. **LESSOR** has made no representations or warranties to **LESSEE** respecting the condition of the Premises. **LESSEE** has had an adequate opportunity to investigate the zoning of the Premises and is satisfied that it can use the Premises in the manner required by this paragraph. **LESSOR** makes no warranty or representation as to the use or potential use to which the Premises may be put.

B. For the purposes of this **LEASE,** the term "Permitted Uses" shall mean the following: (a) all agricultural operations on the Premises, (b) **LESSEE's** historical business

of planting, cultivating, farming, growing, harvesting, storing, fertilizing, transporting and removing [**CITRUS LEASE – citrus and sugar cane (to the extent permitted pursuant to a Conversion Plan (as defined in **Paragraph 4.F** below))**] [**SUGAR LEASE - sugar cane**]; (c) all uses incidental or related to the uses described in clause (b) above, including, without limitation, (i) the planting, cultivating, farming, growing, harvesting, fertilizing, removing, using and selling of appropriate rotation crops and related nursery operations, (ii) the operation of existing railroads adjacent to the Premises and (iii) preexisting residential uses; (d) rock mining as otherwise has been conducted by **LESSEE** solely for use on the Premises (and not for sale to any third party) in connection with its business operations; (e) tenant farming operations; (f) any other historical business operations of **LESSEE** related or ancillary to the agricultural business operations described in clause (b) above or other agreements or leases that are in existence as of the Commencement Date; and (g) any other uses not otherwise described herein for which **LESSEE** obtains **LESSOR's** prior written approval, which approval may be withheld in **LESSOR's** sole and absolute discretion.

C. During the Lease Term, **LESSEE** shall maintain its current level of security for the Premises.

D. Furthermore, **LESSEE** shall control and eradicate to the extent practicable, and shall prevent infestation of, Category I and Category II exotic/invasive pest plants and Class I & II prohibited aquatic plants as described on **Schedule "1"** and **Schedule "2"** attached hereto and made a part hereof ("Exotic Pest Plants"). The sale of any Exotic Pest Plants is strictly prohibited and shall be sufficient cause for immediate termination of this **LEASE**. **LESSEE** agrees that its use and occupancy of the Premises shall result in the land being managed and maintained in accordance with applicable Best Management Practices, provided, however, that in no event shall such Best Management Practices or the terms of this **LEASE** require **LESSEE** to remove Exotic Pest Plants from the Premises to the extent such removal is not consistent with past practices of **LESSEE** on the Premises.

E. **LESSEE** shall neither hunt, trap or capture any wildlife upon the Premises nor allow others to do so; provided, however, **LESSEE** through its principals, contractors and employees may control nuisance wildlife in compliance with all state laws.

F. Prescribed burning on the Premises may be done by **LESSEE** provided that each such prescribed burning shall: (a)(i) have been requested by **LESSEE** in writing, (ii) be approved by **LESSOR** in writing, and (iii) be managed by a state approved burn manager; or (b) be conducted without **LESSOR's** consent or notification, so long as such controlled burning is regulated under the Division of Forestry's burning program, including the programs for [**SUGAR LEASE - sugar cane burning**], [** CITRUS LEASE - citrus tree burning and sugar cane burning (to the extent sugar cane is grown pursuant to a Conversion Plan)**], agricultural container burning, etc. **LESSEE** shall not otherwise knowingly or deliberately set or cause to be set any fire or fires on the Premises.

G. There shall be no fertilization of the Premises, except for fertilization that is in compliance with the applicable Best Management Practices. Additionally there shall be no alterations, improvements or modifications of rangelands, wetlands, swamps or pastures of the Premises (including but not limited to mowing, chopping, disking, plowing, ditching, or digging

water holes), other than (i) as is common in the industry, consistent with **LESSEE**'s past practices and specifically allowed in the Best Management Practices, or (ii) is otherwise consented to in writing by **LESSOR**, which consent may be withheld in **LESSOR's** sole and absolute discretion. **LESSEE** shall not cut or remove any standing green or fallen timber from the Premises, other than [**TO BE INSERTED INTO CITRUS LEASE ONLY - removal of citrus trees for disease control or otherwise**] in the ordinary course of **LESSEE**'s business consistent with past practices. **LESSEE** shall not, for any purpose, drive nails, spikes or staples into or otherwise deface or mar any tree on the Premises.

H. The application of herbicides, pesticides, or agricultural chemicals with respect to the Premises, shall comply with the applicable Best Management Practices and shall be limited to those chemicals specified therein.

I. Intentionally Deleted.

J. **LESSEE** shall adhere to all management practices described in **Schedule "3"** attached hereto and made a part hereof with respect to the Premises ("Best Management Practices").

K. [**TO BE INSERTED INTO SUGAR LEASE ONLY**] **LESSEE** shall at all times during the Lease Term continuously commence and continue all applicable planting and cultivation of the sugar cane crops, as and to the extent typically performed by **LESSEE** in **LESSEE**'s ordinary course of business consistent with past practices and in accordance with the Best Management Practices; provided, however, **LESSEE** is not obligated to continue planting or applicable cultivation with respect thereto after June 30, 2014.

[**TO BE INSERTED INTO CITRUS LEASE ONLY - **LESSEE** shall not be obligated to continue any planting or cultivation of any citrus crops on the Premises during the Lease Term**].

L. So long as **LESSEE** is not in Default under **Paragraphs 7(A)(1), (2) (solely with respect to the failure to pay real estate taxes as required in this LEASE), 3 or 4**, **LESSEE** shall have the right to collect and retain all rents derived from the Premises (inclusive of rents paid during the Lease Term under leases that were in effect prior to the Commencement Date); provided, however that: (i) any such rents collected by **LESSOR** during any period of Default shall be applied to any unpaid amounts due hereunder; (ii) **LESSOR** shall provide written notice to **LESSEE** revoking the license described in **Paragraph 2.M** below at the same time as it provides notice to the tenants directing such rents to be paid directly to **LESSOR**; and (iii) in the event that **LESSEE** has cured any such Default, **LESSEE** shall again have the right to receive such rents, whereupon **LESSOR** shall, by written notice to **LESSEE**, reinstate the license and direct such tenants to deliver their respective rent payments directly to **LESSEE**. **LESSOR** shall, on or before the Commencement Date and thereafter, from time to time, as reasonably requested by **LESSEE**, deliver to each tenant who has a right to occupy the Premises a letter, in form and substance reasonably acceptable to **LESSOR** and **LESSEE**, which directs such tenant to deliver their respective rent payments directly to **LESSEE** during the Lease Term.

M. In addition to the rights granted to **LESSEE** under this **LEASE**, including the provisions set forth in **Paragraph 2.L** above, during the Lease Term, **LESSOR** hereby grants to **LESSEE** a revocable license (which may only be revoked by **LESSOR** in the event of a Default as described in **Paragraph 2.L** above and shall be reinstated pursuant to the terms of such paragraph) granting to **LESSEE** all rights and interest of **LESSOR** under any leases or contracts that have been assigned to and assumed by **LESSOR** on the Closing Date (collectively, the "Related Contracts"), which shall be deemed to include the right to seek any recourse against the applicable third parties thereunder for failure to perform thereunder. As consideration for the foregoing license, **LESSEE** hereby agrees, during the Lease Term, to timely: (a) pay all sums directly to the appropriate parties under the Related Contracts and any New Agreements (as defined in Paragraph 33.P of this **LEASE**) that become payable and accrue thereunder during the Lease Term; and (b) perform the obligations of **LESSOR** under the Related Contracts and any New Agreements that arise and accrue during the Lease Term. If reasonably requested by **LESSEE**, **LESSOR** agrees to execute authorizations reasonably required to evidence and effectuate the foregoing. **LESSEE** hereby agrees to promptly give **LESSOR** copies of any default notices given or received by **LESSEE** in connection with the Related Contracts or New Agreements.

N. **LESSEE** shall not at any time during the Lease Term, directly or indirectly, hypothecate, mortgage or pledge any of the Premises or any of **LESSEE**'s right, title or interest under this **LEASE**.

3. **Lease Term:** The **LESSOR** hereby leases the Premises to the **LESSEE** for a lease term commencing [*_____*] (the "Commencement Date"), and terminating (unless earlier terminated pursuant to other provisions of this **LEASE**) at 11:59 p.m. on the next occurring May 1st [*or July 1st as to Citrus*] that follows the seventh (7th) anniversary of the Commencement Date, to wit [***SUGAR LEASE* - *_____**] and [***CITRUS LEASE* *_____**] (the "Initial Term").

A. In the event that **LESSOR** has not exercised its Option under the Agreement for Sale and Purchase to acquire the Option Property (as defined in the Agreement for Sale and Purchase) on or before the expiration of the Initial Term or if **LESSOR** has exercised such Option prior to such expiration and thereafter not acquired the Option Property for reasons other than an Option Default (as defined below), then the Initial Term shall be automatically extended, without the necessity of either Party providing any written notice to the other (unless earlier terminated pursuant to other provisions of this **LEASE**), for an additional three (3) years (the "First Renewal Term") so that the Lease Term (as defined below) for the Premises is extended to 11:59 p.m. on the next occurring [**SUGAR LEASE - May 1st**] or [**CITRUS LEASE - July 1st**] that follows the tenth (10th) anniversary of the Commencement Date, which extension shall be on the same terms and conditions set forth herein [**SUGAR LEASE - , including, without limitation, the Initial Rent (as defined in **Paragraph 5** of this **LEASE**). If **LESSOR** timely exercises its Option and **LESSOR's** acquisition of the Option Property does not occur until after the expiration of the Initial Term, the Initial Term shall be deemed to be extended on the same terms and conditions hereunder, to the extent applicable, until the closing of such acquisition whereupon **subparagraph D** below shall govern. In the event that **LESSOR** has exercised its Option to acquire the Option Property prior to the expiration of the Initial Term and thereafter not acquired the Option Property due to Seller's

default beyond all applicable notice and cure periods under the Agreement for Sale and Purchase or the Option Purchase Agreement (as defined in the Agreement for Sale and Purchase) and provided that Buyer is not then in default under either of such agreements beyond all applicable notice and cure periods (such default(s), an "Option Default"), then (x) **LESSOR** will have the right to elect to change the Rent (effective as of the date of the Option Default) to "Fair Market Rent" determined in accordance with Paragraph 5 of this **LEASE**, (y) the Initial Term will not be extended and (z) this **LEASE** will terminate without further notice or action by **LESSOR** on (a) the expiration of the Initial Term or (b) earlier, as to portions of the Premises as harvested, on a block-by-block basis, for **LESSEE's** harvest that occurs during the last harvest year of the Initial Term.**]

B. In the event that the **LESSOR** has not exercised its Option under the Agreement for Sale and Purchase to acquire the Option Property on or before the tenth (10^{th}) anniversary of the Commencement Date) or if **LESSOR** has exercised such Option prior to such expiration and thereafter not acquired the Option Property for reasons other than an Option Default, then the First Renewal Term shall be automatically extended, without the necessity of either Party providing any written notice to the other (unless earlier terminated pursuant to other provisions of this **LEASE**), for an additional ten (10) years (the "Second Renewal Term"), so that the Lease Term for the Premises is extended to 11:59 p.m. on the next occurring [**SUGAR LEASE - May 1^{st}**] or [**CITRUS LEASE - July 1^{st}**] that follows twentieth (20^{th}) anniversary of the Commencement Date, which extension shall be on the same terms and conditions set forth herein [**SUGAR LEASE - , except that the Initial Rent hereunder shall be adjusted to "Fair Market Rent" as determined in accordance with **Paragraph 5** of this **LEASE**. If **LESSOR** timely exercises its Option and the acquisition of the Option Property does not occur until after the expiration of the First Renewal Term, the First Renewal Term shall be deemed to be extended on the same terms and conditions hereunder, to the extent applicable, until the closing of such acquisition whereupon **subparagraph D** below shall govern. In the event of an Option Default during the First Renewal Term, (x) **LESSOR** will have the right to elect to change the Rent (effective as of the date of the Option Default) to "Fair Market Rent" determined in accordance with Paragraph 5 of this **LEASE**, (y) the First Renewal Term will not be extended and (z) this **LEASE** will terminate without further notice or action by **LESSOR** (a) on the expiration of the First Renewal Term or (b) earlier, as to portions of the Premises as harvested, on a block-by-block basis, for **LESSEE's** harvest that occurs during the last harvest year of the First Renewal Term.**]

C. The Initial Term, First Renewal Term and Second Renewal Term, as applicable, are herein called the "Lease Term".

D. In the event that **LESSOR** acquires the Option Property, from and after the date of the closing of such acquisition, the Premises and the Option Property shall be governed by the terms of the New Lease (as defined in the Agreement for Sale and Purchase) in accordance with the provisions of the Agreement for Sale and Purchase. If the Option Property is not acquired after Buyer has exercised the Option due to Buyer's default under the Agreement for Sale and Purchase or the Option Purchase Agreement after expiration of applicable notice and cure periods, then this **LEASE** shall continue under the terms hereof as if the Option were not exercised.

E. The termination date of this **LEASE** as to any portion(s) of the Premises is herein called the "Expiration Date" solely with respect to such portion of the Premises being terminated, and otherwise refers to the date of expiration or earlier termination of this **LEASE**.

F. Commencing at least two (2) years prior to the expiration of the Second Renewal Term, if any, and provided that a Default by **LESSEE** does not then exist and would not exist with the giving of notice, the lapse of time or both, **LESSOR** and **LESSEE** agree to negotiate in good-faith an extension of the Lease Term with respect to the Premises, if **LESSOR** and **LESSEE** mutually determine such an extension would be mutually beneficial to the Parties, taking into consideration factors such as, impact on the local economy, **LESSOR's** intended use of the Premises and its construction plans and timelines therefor [** **SUGAR LEASE ONLY** - and the amount of sugarcane that is needed to keep the sugar mill owned by **LESSOR** or its successors and assigns economically viable, etc**]. Each Party shall bear its own costs and expenses and the fees of its consultants, contractors and advisors incurred in connection with any such negotiations. Either Party may terminate and withdraw from any such negotiations at any time in its absolute and sole discretion by notice to the other Party.

4. **Right to Terminate:**

A. Except as otherwise provided in **Paragraph 7.** of this **LEASE**, if either Party fails to fulfill its material obligations under this **LEASE** in a timely and proper manner, the other Party shall have the right to terminate this **LEASE** or exercise other rights and remedies hereunder after giving written notice of default to the applicable Party and an opportunity to cure the same as provided in this **Subparagraph 4.A**. An applicable Party that fails to fulfill its material obligations under this **LEASE** in a timely and proper manner (except as otherwise provided in **Paragraph 7.** of this **LEASE**) shall have forty-five (45) calendar days from receipt of notice from the other Party to remedy the deficiency. Notwithstanding the foregoing, if such deficiency cannot with due diligence be remedied by the applicable Party within such 45-day period, and if such Party diligently commences to remedy such deficiency within such 45-day period and thereafter prosecutes such remedy with reasonable diligence, the period of time to remedy such deficiency shall be extended to permit a cure period of one hundred and twenty (120) days in the aggregate so long as such Party prosecutes such remedy with reasonable diligence; provided, however that upon request of such Party, the other Party shall, from time to time, consent in writing to an extension of such 120 day period, which consent shall not be unreasonably withheld, so long as the applicable Party is diligently proceeding to cure such deficiency. Such curing Party's request for an extension of time to cure shall be accompanied by a reasonably detailed schedule for completing such cure. A Party shall not be deemed to be in default under the terms of this **LEASE** unless and until a Default (as defined in **Paragraph 7** below) has occurred.

B. [** **FOR INSERTION INTO CITRUS LEASE ONLY** – At any time during the Lease Term, **LESSEE**, in its sole discretion, shall have the right to terminate this **LEASE** as to any portion of the Premises, or all of the Premises, by giving a written termination notice to **LESSOR** at least one (1) year prior to the actual date of termination therefor, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands (such portions of the Premises as to which the Lease has been terminated shall be referred to herein as the "Released Premises").

Notwithstanding the foregoing, in the event that **LESSEE** terminates this **LEASE** as provided in this subparagraph, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis or the following July 1st] (i.e., **LESSEE**'s final harvest), whichever is earlier.**]

[**ALTERNATE SUBPARAGRAPH B FOR INSERTION INTO SUGAR LEASE ONLY –**LESSEE** shall have the right, in its sole discretion, to terminate all or portions of this **LEASE** as follows:

(1) From and after January 1, 2011, **LESSEE**, shall have the right to terminate this **LEASE** as to all but not less than all of the Premises by giving a written termination notice to **LESSOR** on or before June 10, 2011 and each June 10th of each calendar year thereafter, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the Premises, whereupon this **LEASE** shall terminate on May 1st of the next calendar year following such notice. For example, if **LESSEE** gives a termination notice to **LESSOR** on June 4, 2011, then this **LEASE** shall terminate on May 1, 2012 with respect to the Premises.

(2) At any time during the Lease Term, and provided that **LESSEE** has not exercised its right under **subparagraph (3)** with respect to the applicable portion of the Premises, **LESSEE** shall have the right to terminate this **LEASE** as to any portion of the Premises which it intends to leave fallow and as to which it has given a written termination notice to **LESSOR** setting forth a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands, which notice shall be given no later than one hundred eighty (180) days prior to the scheduled date of commencement of the harvest of the portion of the Premises to be left fallow pursuant to such notice; provided, however, that such termination may not occur pursuant to this **subparagraph (2)** prior to June 30, 2014. In the event that **LESSEE** terminates this **LEASE** as provided in this **subparagraph (2)**, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis, or the following May 1st, whichever is earlier.

(3) At any time during the Lease Term, and in addition to **LESSEE**'s termination rights under **subparagraphs (1)** and **(2)**, **LESSEE**, in its sole discretion, shall have the right to terminate this LEASE as to any portion of the Premises, or all of the Premises, by giving a written termination notice to **LESSOR** at least one (1) year prior to the actual date of termination therefor, which notice shall include a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands (such portions of the Premises as to which the Lease has been terminated shall be referred to herein as the "Released Premises"); provided, however, that such termination may not occur pursuant to this **subparagraph (3)** prior to June 30, 2014. Notwithstanding the foregoing, in the event that **LESSEE** terminates this **LEASE** as provided in this subparagraph, then this **LEASE** shall partially terminate for portions of the Premises as harvested, on a block-by-block basis, or the following May 1st (i.e., **LESSEE**'s final harvest), whichever is earlier.**]

C. Intentionally Deleted

D. In the event of a termination of this **LEASE** by **LESSEE** with respect to a portion of the Premises pursuant to [**CITRUS LEASE – **subparagraph B**] [**SUGAR LEASE - **subparagraphs B.(2) and (3).**], (x) **LESSEE** shall be deemed to have a non-exclusive right of access, utility service and drainage (subject to reasonable relocation by **LESSOR**) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage lines and/or areas within the Released Premises as reasonably necessary for **LESSEE** to continue to have access to, utilities and drainage on the remaining portion of the Premises that is then still subject to the terms of this **LEASE** and (y) **LESSOR** shall be deemed to have a non-exclusive right of access, utility service and drainage (subject to reasonable relocation by **LESSEE**) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage lines and/or areas within the remaining Premises subject to this **LEASE** as reasonably necessary for **LESSOR** and its tenants, as applicable, to have access to, utilities and drainage on the Released Premises.

E. In the event that **LESSEE** terminates this **LEASE** in accordance with **subparagraph B** above, then, in such event, **LESSEE** agrees to reasonably cooperate with **LESSOR** and any successor tenants of the Released Premises, including with respect to planting, cultivation and harvesting, in order for such tenants to have access to the Released Premises over the Premises – if such access is the typical method of accessing the Released Premises (upon terms and conditions provided in this **LEASE** for access by private parties) - and to reasonably coordinate such operations with **LESSEE**'s operations on the remaining portion of the Premises.

F. [**INSERTION INTO SUGAR LEASE ONLY – Subject to the notice requirements set forth below, **LESSOR**, in its sole discretion, and without payment or consideration of any kind to **LESSEE** whatsoever, and in addition to **LESSOR's** other termination rights in this **LEASE**, shall have the right to terminate this **LEASE** as follows:

(1) at any time during the Lease Term, this **LEASE** may be terminated as to portion(s) of the Premises in an amount not to exceed ten thousand (10,000) acres in the aggregate (in portions of land which shall be comprised of no less than two thousand (2,000) contiguous acres, except the last portion of Premises so terminated may be less in acreage if the aggregate acreage of prior terminations is greater than 8,000 acres), which are to be used in connection with a South Florida Water Management District ("SFWMD") funded project approved by the Governing Board of SFWMD ("Project") to be constructed on the Premises or in exchange for property necessary for a Project (subject to **subparagraph (6)** below);

(2) in addition to **LESSOR's** rights under subparagraph (1) immediately above, at any time during the Second Renewal Term, this **LEASE** may be terminated as to portion(s) of the Premises in an amount not to exceed ten thousand (10,000) acres in the aggregate (in portions of land which shall be comprised of no less than two thousand (2,000) contiguous acres, except the last portion of Premises so terminated may be less in acreage if the aggregate acreage of prior terminations is greater than 8,000 acres), which are to be used in connection with a Project to be constructed on the Premises or in exchange for property necessary for a Project (subject to **subparagraph (6)** below);

(3) in the event that **LESSOR** acquires the Option Property pursuant to exercise of its Option under the Agreement for Sale and Purchase or if **LESSOR** has not acquired the Option Property as a result of an Option Default, then:

(a) from and after **LESSOR's** acquisition of the Option Property or an Option Default, **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises or, to the extent acquired by **LESSOR**, the Option Property (in which event the applicable termination shall occur under the New Lease), to be used (i) in connection with a Project to be constructed on the Premises or the Option Property, (ii) in exchange for no more than 2,000 contiguous acres in the acreage located in the approximately 25,000 acre parcel depicted in **Exhibit 4.F.6.** which is necessary for a Project to be constructed within such 25,000 acre parcel, provided, however, that prior to the expiration of the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** for such exchanges only as to 1,000 acres or (iii) in exchange for all or any portion of the Premises that is adjacent to the "L-8 Canal" for a Project built primarily to provide water quality treatment for water discharges from the S-5A Basin; and

(b) after the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises or, to the extent acquired by **LESSOR**, the Option Property (in which event the applicable termination shall occur under the New Lease), to be used in exchange for property for a Project to be located within the area shown on **Exhibit 4.F.3(b)** – it being agreed by the Parties that if the **LESSOR** constructs multiple Projects within the area known as the "Everglades Agricultural Area" for restoration purposes, then **LESSOR** will, to the extent practicable, schedule the construction of such Projects that require portions of the Premises to be released from this **LEASE** pursuant to the provisions hereof, after the construction of such other Projects;

(4) after the expiration of the Initial Term, this **LEASE** may be terminated as to portion(s) of the Premises identified on **Exhibit 4.F.(4)** (individually or collectively, the "Transition Acres") in connection with a Project on or transfers of all or any portion of the Transition Acres by **LESSOR** to municipalities or other governmental entities (each, a "Governmental Transferee"). Any such transfer shall be made by **LESSOR** to the Governmental Transferee pursuant to the terms of a transfer agreement between **LESSOR** and Governmental Transferee, to which will be attached a form of lease agreement with respect to the applicable portion of the Transition Acres between Governmental Transferee and **LESSEE** reasonably acceptable to both **LESSOR** and **LESSEE**, setting forth the termination of such Transition Acres from this **LEASE** and providing that termination of such lease by Governmental Transferee for reasons other than a default by **LESSEE** thereunder shall be subject to Governmental Transferee providing the termination notices required under **subparagraph (8)** and thereafter under **subparagraph (10)** if **LESSEE** exercises its right under **subparagraph (10)** to continue to lease the Transition Acres to be terminated, in connection with the Governmental Transferee's use of relevant portion of the Transition Acres for a funded and approved development or other local government project. In no event shall the Governmental Transferee be subject to the **LESSEE**'s ROFR under Paragraph 39 of this **LEASE**.

(5) Intentionally Deleted

(6) Prior to **LESSOR's** acquisition of the Option Property pursuant to the Option, during the Lease Term: (a) **LESSOR** shall be permitted to terminate this **LEASE** for no more than 2,000 contiguous acres in the acreage located in the approximately 25,000 acre parcel depicted in **Exhibit 4.F.6.** in connection with exchanges necessary for a Project to be constructed on the Premises, provided, however, that prior to the expiration of the tenth (10^{th}) anniversary of the Commencement Date, **LESSOR** may terminate this **LEASE** for such exchanges only as to 1,000 acres; and (b) **LESSOR** may terminate this **LEASE** as to all or any portion of the Premises that is adjacent to the "L-8 Canal" in exchange for property for a Project built primarily to provide water quality treatment for discharges from the S-5A Basin - provided, however that the portions of the Premises as to which this **LEASE** may be terminated under clauses (a) or (b) are subject to the limitations of (and part of the acreages described in) **subparagraph (1)** and **subparagraph (2)** above.

(7) From and after June 30, 2014 until the Expiration Date, if **LESSEE** (a) has allowed fallow fields to exist on the Premises and (b) has identified in a written notice to **LESSOR** the fields that **LESSEE** intends to abandon (the "Applicable Premises"), **LESSOR** shall have the right, in its sole discretion and in addition to its other termination rights under this **LEASE**, to terminate this **LEASE** with respect to the Applicable Premises upon fifteen (15) days written notice to the **LESSEE** and **LESSEE** shall thereupon vacate the Applicable Premises within fifteen (15) days of such written notice in accordance with **Paragraph 22.** of this **LEASE** or be deemed to be holding over pursuant to **Paragraph 23.** of this **LEASE.** From and after the date of the termination of this **LEASE** for all or any portion of the Applicable Premises as provided in this **Paragraph 4.F.(7)**, the annual Rent shall be reduced by the then existing Rent per acre multiplied by the acreage of such released portion of the Premises,

(8) In the case of each of **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)** above, in order for a termination to be effective (including any termination for exchanges permitted thereunder), **LESSOR** shall provide written notice of its intention to terminate the **LEASE** with respect to any portion of the Premises, at least two (2) years prior to the May 1^{st} on which **LESSOR** intends that such termination be effective (the "First Notice"), and then again at least one (1) year prior to the May 1^{st} on which **LESSOR** intends such termination to be effective (the "Second Notice"), whereupon this **LEASE** shall terminate as to such portion(s) of the Premises so noticed on the May 1^{st} which is at least two (2) calendar years following the First Notice; it being understood that if **LESSOR** provides a First Notice but does not subsequently send a Second Notice at least one year prior to the May 1^{st} termination date specified in the First Notice, then no termination shall occur with respect to such portion of the Premises until **LESSOR** provides a second notice at least one (1) year prior to the May 1^{st} on which such termination will be effective and confirming the lands (or portion thereof) designated in the First Notice to be terminated from this **LEASE.**

(9) In the event of any such termination by **LESSOR** pursuant to the above **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6),** (x) **LESSEE** shall be deemed to have a non-exclusive right of access, utility service and drainage (if necessary)(with provisions for relocation thereof) until the Expiration Date over and across paved or unpaved roadways or pathways, utility/drainage areas and lines within the portions of the Premises so terminated by **LESSOR** as reasonably necessary for **LESSEE** to continue to

have access, utilities and drainage for the remaining portion of the Premises that is then still subject to the terms of this **LEASE** and (y) **LESSOR** and its tenants, if any, shall be deemed have the right of access, utility service and drainage (if necessary) (with provisions for relocation thereof) over and across paved or unpaved roadways or pathways, utility/drainage areas and lines within the remaining portion of the Premises subject to this **LEASE** as reasonably necessary for **LESSOR** and its tenants to continue to have access, utilities and drainage for the portions of the Premises so terminated by **LESSOR**.

(10) Notwithstanding the foregoing, **LESSEE**, at **LESSEE**'s risk, may elect, by prior written notification to **LESSOR** provided not less than one hundred (180) days prior to the effective date of any termination by **LESSOR** pursuant to this **Paragraph 4.F.**, to continue farming operations on the portion of the Premises as to which this **LEASE** has been terminated pursuant to **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)** above, as applicable, until **LESSOR**, in its sole and absolute discretion: (x) notifies **LESSEE** in writing that such farming operations are incompatible with the construction of the applicable Project and directs **LESSEE** to cease operations on the date set forth in such notice; or (y) in the event that the portions of the Premises being removed from this **LEASE** are being exchanged with property owned by another party for a Project, notifies **LESSEE** in writing that the farming operations of such property owned by such other party are incompatible with the construction of the applicable Project and that such other party has been notified of such in writing and has been directed to vacate its property and that **LESSEE** is directed to cease operations on the date set forth in such notice. If **LESSEE** elects to continue farming operations notwithstanding any termination notice by **LESSOR** pursuant to **subparagraphs (1), (2), (3), (4) [in connection with a Project] and (6)**, the **LEASE** Term with respect to such portions of the Premises shall be extended to allow **LESSEE** to continue such farming operations, but will terminate on the earliest of 11:59 p.m. on the next occurring May 1st that follows the twentieth (20th) anniversary of the Commencement Date or upon the occurrence of (x) or (y) above; provided, however, that as consideration for such extension of the Lease Term, the payment and performance terms, conditions and obligations under this **LEASE**, and all rights and remedies hereunder, shall remain in full force and effect with respect to each portion of the Premises **LESSEE** continues to farm pursuant to this **subparagraph (10)**. Such extension of the Lease Term shall automatically terminate upon the occurrence of any Default by **LESSEE** under this **LEASE** or the date of set forth in **LESSOR**'s termination notice as provided in (x) or (y) above. From and after the date **LESSEE** vacates a portion of the Premises in accordance with any provision of this **LEASE** which permits termination with respect to a portion of the Premises, the annual Rent shall be reduced by the applicable Rent, multiplied by the acreage of the applicable portion of the Premises so terminated. **LESSOR** and **LESSEE** hereby agree to use mutually reasonable efforts in order for **LESSOR** to provide **LESSEE** with as much time as possible when giving its notice to vacate the portion of the Premises so released, as provided in this **subparagraph (10)**, it being the intent of the Parties to allow **LESSEE** to harvest as many crops as reasonably practicable before the farming operation are incompatible with the construction of a Project as determined by **LESSOR** in its absolute and sole discretion.**]

*[**ALTERNATE 4.F. TO BE INSERTED INTO CITRUS LEASE ONLY- LESSOR, in its sole discretion, and without payment or consideration of any kind to LESSEE whatsoever, shall have the right to terminate this LEASE for all or any portion of the Premises upon notice prior to any July 1st, whereupon this LEASE shall terminate as to such portion(s) of the*

Premises so noticed as they are harvested after such July 1st, subject to the requirement that all such harvesting shall be completed no later than June 30 of the following year, as of which day ***LESSEE*** *shall have vacated the terminated Premises.* ***LESSEE*** *shall, upon receipt of such termination notice from* ***LESSOR****, prepare and deliver to* ***LESSOR*** *a harvest schedule and map describing the dates and sequence for the conduct of the harvest on the terminated lands. Notwithstanding the foregoing, if at any time during the Lease Term,* ***LESSOR*** *and* ***LESSEE*** *have mutually agreed to a plan specifying the acreage and location of any portion of the Premises to be converted to sugarcane planting and cultivation, the schedule for effecting such conversion, the Rent, termination rights and other applicable terms and conditions thereof (the "Conversion Plan"), the Parties shall be governed by the Conversion Plan in respect of the portion of the Premises converted to sugarcane planting and cultivation. Notwithstanding the foregoing,* ***LESSOR*** *may only terminate this* ***LEASE*** *with respect to the portion of the Premises having approximately twenty (20) acres described in* ***Exhibit 4.F*** *upon the earlier to occur of (w)* ***LESSEE*** *fails within thirty (30) days after* ***LESSOR's*** *written request to provide reasonable information about the expected duration of the experimental citrus project being conducted thereon as of the Commencement Date; (x) the next occurring July 1st that follows the tenth (10th) anniversary of the Commencement Date, (y) the completion, failure or abandonment of the citrus project or (z) one year after* ***LESSOR's*** *notice to* ***LESSEE*** *of the termination of this* ***LEASE*** *because such experiment is incompatible with construction of a Project on the portion of the Premises that is within the immediate vicinity of such 20-acre parcel.*

G. In the event any portion of the Premises is transferred with a reservation of **LESSEE**'s leasehold rights as provided for in this **Paragraph 4**, **LESSOR** and **LESSEE** agree that they shall record a memorandum of this **LEASE** in the public records of the applicable Counties memorializing the leasehold reservations set forth in this **Paragraph 4** such that each applicable leasehold reservation is binding on such transferee, **LESSOR**, **LESSEE** and their respective successors and assigns.

5. **Rent:**

A. *[**TO BE INSERTED INTO CITRUS LEASE ONLY - LESSOR and* ***LESSEE*** *acknowledge and agree that, during the Lease Term, no Rent is due hereunder, unless* ***LESSEE*** *converts all or any portion of the Premises from citrus groves to sugarcane fields in accordance with the terms of a Conversion Plan, in which event from and after the date of such conversion* ***LESSEE*** *shall pay, in advance, to* ***LESSOR*** *a quarterly rental in the amount specified in the Conversion Plan representing twenty-five percent (25%) of the annual rental rate specified in the Conversion Plan (the "Initial Rent") for the portion of the Premises so converted to sugarcane planting and cultivation.**]*

[ALTERNATE SUBPARAGRAPH A TO BE INSERTED INTO SUGAR LEASE ONLY** - As consideration for the rights conferred upon **LESSEE** by **LESSOR** pursuant to this **LEASE**, from and after the Commencement Date until the earlier to occur of (i) the expiration of the First Renewal Term; or (ii) the date of **LESSOR's** acquisition of the Option Property under the Option, **LESSEE** shall pay, in advance, to **LESSOR** a quarterly rental in the amount of * _____ * representing twenty-five percent (25%) of the One Hundred Fifty and No/100 Dollars ($150.00) per acre multiplied by [_____] gross acres [*NOTE – ACTUAL ACREAGE OF SUGAR CANE PORTION OF PREMISES FROM THE FINAL APPROVED

SURVEYS SHALL BE INSERTED AT CLOSING*] (the "Initial Rent") (it being understood and agreed that the Rent due hereunder may change from time to time on a pro-rata basis (based upon acreage) as this **LEASE** is terminated as to portions of the Premises as provided in this **LEASE** for reasons other than a Default). In the event that **LESSOR** has not acquired the Option Property under the Option, for reasons other than an Option Default, the Initial Rent hereunder shall be adjusted to be the "Fair Market Rent" for the Premises on the next occurring May 1st that follows the tenth (10th), thirteenth (13th), and sixteenth (16th) anniversaries of the Commencement Date, and be determined as follows:

(1) No later than one (1) year prior to the commencement of the Second Renewal Term, **LESSOR** shall provide written notice to **LESSEE** containing an original, signed appraisal dated within thirty (30) days of such notice setting forth the **LESSOR's** proposed fair market rent for the Premises (the "**LESSOR's** Proposed FMR"). The appraisal must comply with the statutorily mandated appraisal standards (to the extent applicable to **LESSOR**) and must have been performed by an appraiser meeting the Appraiser Requirements set forth in **Paragraph 5.A.(4)** ("**LESSOR's** Appraisal").

(2) Within sixty (60) days after receipt of **LESSOR's** Proposed FMR), **LESSEE** shall elect to either: (i) accept **LESSOR's** Proposed FMR as the Fair Market Rent; or (ii) deliver to **LESSOR** an original, signed appraisal setting forth **LESSEE's** proposed fair market rent for the Premises (the "**LESSEE's** Proposed FMR"), which appraisal must be performed by an appraiser meeting the Appraiser Requirements set forth in **Paragraph 5.A.(4)** and must be dated within sixty (60) days of **LESSEE's** receipt of **LESSOR's** Proposed FMR ("**LESSEE's** Appraisal").

(3) If **LESSEE** elects to obtain **LESSEE's** Appraisal under **subparagraph A(2)** above, then:

(a) In the event **LESSOR's** Proposed FMR is equal to or more than ninety percent (90%) and less than or equal to one hundred ten percent (110%) of **LESSEE's** Proposed FMR, then the "Fair Market Rent" shall be deemed to be the average of **LESSOR's** Appraisal and **LESSEE's** Appraisal (i.e., the sum of both proposed rents divided by two (2)).

(b) In the event **LESSOR's** Proposed FMR is less than ninety percent (90%) of or greater than one hundred ten percent (110%) of **LESSEE's** Proposed FMR, then within fifteen (15) days after **LESSEE's** delivery of **LESSEE's** Appraisal to **LESSOR**, **LESSOR's** appraiser and **LESSEE's** appraiser must select a third (3rd) appraiser meeting the Appraiser Requirements set forth below (the "Third Appraiser"). The Third Appraiser shall perform its appraisal of its proposed fair market rent for the Premises within sixty (60) days of being selected by **LESSOR's** appraiser and **LESSEE's** appraiser. Once such appraisal is complete, the average of the two (2) closest appraisals in terms of fair market rent shall be deemed to be the "Fair Market Rent".

(4) Unless otherwise agreed to writing by **LESSOR** and **LESSEE**, each of the appraisers set forth above shall be M.A.I. certified appraisers, having at least ten (10)

years experience in appraising the fair market rental value of agricultural property in Palm Beach County, Florida (the "Appraiser Requirements").

(5) **LESSOR** and **LESSEE** shall each be responsible for the fees, costs and expenses of their respective appraiser. The fees, costs and expenses of the Third Appraiser and any mediation to select the same as provided in **subparagraph (6)** below shall be shared equally by **LESSOR** and **LESSEE**.

(6) If **LESSOR's** appraiser and **LESSEE's** appraiser fail to appoint the Third Appraiser within the time and in the manner prescribed in **subparagraph (3)(b)** above, then **LESSOR** and/or **LESSEE** shall promptly apply to the Palm Beach County office of Mediation, Inc. (or if such company is no longer in business, another mediation company with offices in Palm Beach County) for the appointment of the Third Appraiser. Within five (5) days of receipt of notice from one Party that such mediation application has been filed, each Party shall submit the names of up to three (3) appraisers meeting the Appraisal Requirements for the mediator to select. The mediator shall be instructed by either Party to select the Third Appraiser within ten (10) days after receipt of such names. The failure of a Party to timely submit any names constitutes a waiver of the right to so submit such names and the mediator shall select the Third Appraiser from the list of names that was timely submitted.

The Initial Rent and Fair Market Rent, as may be applicable, shall be referred to individually and collectively, as the "Rent". **LESSEE** agrees to pay Rent to **LESSOR**, without notice, offset, deduction, or set-off. Initial Rent shall be payable (a) on the Commencement Date on a pro-rated basis based on the number of days for the period beginning on the Commencement Date through and including the last day of the calendar quarter in which the Commencement Date falls and (b) on the first day of each calendar quarter (i.e. January 1st, April 1st, July 1st, and October 1st) thereafter, through and including the final calendar quarter of the First Renewal Term, if **LESSOR** does not acquire the Option Property, or the date of closing of the acquisition of the Option Property by **LESSOR**, if **LESSOR** so acquires the Option Property, together with all applicable sales and use taxes (it being agreed that the Rent due for the last or any interim calendar quarter shall be appropriately adjusted and prorated). After the Fair Market Rent is determined in accordance with **Paragraph 5.A.**, Rent shall be subject to yearly adjustment for each subsequent twelve-month period of the Lease Term in accordance with **subparagraph F** below until the Fair Market Rent determination is again applicable (i.e., on the next occurring May 1st that follows the thirteenth (13th) and sixteenth (16th) anniversaries of the Commencement Date), and shall be payable quarterly in accordance with the schedule, together with all applicable sales and use taxes.**]

B. In addition, **LESSEE** shall be responsible for payment of any and all Additional Rent (as defined in **Paragraph 5.D.** below) throughout the Lease Term as and when due under the terms of this **LEASE**.

C. All payments of Rent, as well as all other amounts due under this **LEASE** from **LESSEE** to **LESSOR** shall be made to **LESSOR** at the following address:

South Florida Water Management District
Attention:_____

Post Office Box 24680
3301 Gun Club Road
West Palm Beach, Florida 33406

RE: Contract #_____

D. This **LEASE** shall be totally and absolutely net to **LESSOR**. In addition to the Rent and Additional Rent stated above, **LESSEE** shall pay all charges for gas, water, sewer, waste removal, dumpster charges, janitorial services, electricity, telephone, and other utility services used by **LESSEE** in connection with the Premises during the Lease Term and any and all other costs, expenses, taxes or obligations of every kind related to the Premises and the use, operation, occupancy thereof during the Lease Term, including obligations arising under recorded or unrecorded documents encumbering or relating to the Premises, if any (to the extent such recorded or unrecorded documents exist on the day immediately preceding the Commencement Date). Without limiting the foregoing, if any charges, costs, expenses, taxes or other monetary obligations of **LESSEE** under this **LEASE** are not paid by **LESSEE** as and when due, after expiration of all applicable grace and notice periods, **LESSOR**, without limiting any of its other rights and remedies under this **LEASE**, shall have the right, but not the obligation, to pay any of the foregoing, and the amount of the expense or cost of any such obligations so paid by **LESSOR** shall thereupon become due to **LESSOR** from **LESSEE** within five (5) days following **LESSOR's** written demand, together with interest accruing on such amount at the highest rate allowed by law if not paid to **LESSOR** within such five (5) day period, as "Additional Rent".

E. If any Rent due from **LESSEE** to **LESSOR** hereunder is not received by **LESSOR** on or before the date due, then, in addition to all other rights and remedies available to **LESSOR** under this **LEASE**, **LESSOR** at **LESSOR's** sole option may either: (i) charge **LESSEE** a late fee equal to five percent (5%) of the installment of Rent not paid when due; or (ii) charge interest on the installment of Rent not paid when due at the highest rate allowed by law from the date due until the date received by **LESSOR** in immediately available funds.

F. [****TO BE INSERTED INTO SUGAR LEASE ONLY** - The yearly adjustment to the Fair Market Rent for the applicable twelve (12) month periods after determination of the Fair Market Rent in accordance with **Paragraph 5.A.** shall be determined, as follows:

The Fair Market Rent shall be adjusted to the extent that the Producer Price Index for "Raw Cane Sugar and Byproducts", as published in the U.S. Department of Labor, Bureau of Labor Statistics, based on a 1982 base year value of 100 ("PPI") for the average of the twelve (12) calendar month period immediately preceding the new twelve (12) calendar month period of the Lease Term ("Comparison Period") differs from the PPI for the corresponding average of the twelve (12) month calendar period that occurs immediately prior to the Comparison Period of the Lease Term ("Base Period"). If the average PPI for the Comparison Period is different from (i.e., more than or less than) the average PPI for the Base Period, then the Rent for the new year shall be changed upward or downward, as appropriate, by the same percentage as the average PPI has changed upward or downward, as appropriate, from the Base Month. Since the monthly PPI that comes out is preliminary and subject to revision four months after original publication,

the final determination of the average PPI for the applicable twelve (12) month period will not be made until it is final. The Rent paid for any new twelve (12) month period will be based on the preliminary average PPI and then will be finally adjusted when the PPI becomes final for the applicable period.

As an example of yearly adjustment in year 2, assume that the Fair Market Rent in year 1 is $150/acre and that final average PPI for the 12-month Base Period immediately preceding the 12-month period that represents year 1 is 100 and that the final average PPI for the Comparison Period which is the 12-month period immediately prior to the commencement of year 2 (i.e., which is the 12-month period comprising year 1) is 137. The Rent for year 2 would be adjusted upward by 137-100 = .37 x $150/acre = $55.5/acre. So the new Rent commencing year 2 would be $150/acre + $55.5/acre = $205.5/acre.

As an example of yearly adjustment in year 3, assume that the Rent for year 2 is $205.5/acre as in the preceding example and assume that the final average PPI for the Base Year in year 2 is 147. The Rent for year 3 would be adjusted upward from the Rent for year 2 by 147-137 = 10/137 =.0729 rounded to .073 x $205.5/acre = $15/acre. So the new Rent of year 3 would be $205.5/acre + $15/acre = $220.5/acre.**]

G. In the event **LESSOR** exercises the Option, then at the closing of the acquisition of the Option Property, the Parties will execute the New Lease in accordance with the terms of the Agreement for Sale and Purchase and thereafter the Premises and the Option Property will be governed by the terms of the New Lease.

6. **Real Estate Taxes:**

A. **LESSEE** understands and agrees that upon execution of this **LEASE**, the Premises shall be placed upon the tax rolls of the county in which the Premises is located without state government exempt status, but with any agricultural use exemption that **LESSEE** obtains, provided that **LESSEE** shall be solely responsible for obtaining and maintaining the agricultural exemption. **LESSOR** agrees that it will not take any affirmative action during the Lease Term which removes the agricultural use exemption. **LESSOR** may, in **LESSOR'S** sole and absolute discretion, record a Memorandum of **LEASE**, executed by the **LESSOR**. **LESSEE** shall pay all real property taxes, intangible property taxes and personal property taxes, as well as all assessments, including but not limited to pending, certified, confirmed and ratified special assessment liens, accrued or levied with respect to the Premises or this **LEASE** during the Lease Term. The amount of taxes or assessments will be determined by the county property appraiser. **LESSEE** acknowledges that it shall be liable for such real property taxes, personal property taxes and intangible taxes, and assessments as are applicable for the Premises and this **LEASE** during the period in which this **LEASE** is in effect.

B. **LESSEE** shall pay such taxes and assessments promptly upon receipt of an assessment notice from the taxing authority but no later than their due date, and shall furnish proof of such payment to the **LESSOR's** Division of Procurement and Contract Administration (see **Paragraph 5.B.** above) within 30 days of payment. Any penalties or late fees incurred for failure to pay said taxes and assessments shall be the responsibility of the **LESSEE**.

C. With respect to **LESSEE**'s obligation to pay real estate taxes under this **LEASE**, in the event the assessing authority permits any tax assessments to be paid in installments, **LESSEE** may exercise the option to pay the same in installments and shall pay all such installments that relate to the Lease Term as the same respectively become due and before they become delinquent, and provided that any such assessments which relate to a fiscal period for the taxing authority, part of which period is included in the Lease Term and a part of which is included in a period of time prior to or after the Lease Term, shall be allocated and prorated between **LESSOR** and **LESSEE** as of the Expiration Date of this **LEASE**. Taxes shall be prorated based on the tax for the year of the Expiration Date with due allowance made for exemptions and/or special classifications, if any. If the assessment for the year of the Expiration Date is not available, then taxes will be prorated on the prior year's tax. Any tax proration based on an estimate shall be subsequently readjusted at the request of either Party upon receipt of a tax bill. Upon the Expiration Date, **LESSEE** shall pay all real property taxes accrued with respect to the Premises in accordance with Section 196.295, Florida Statutes, if applicable. The provisions of this **subparagraph** shall survive the Expiration Date.

D. **LESSEE** shall have the right to contest the amount or validity of any real property taxes or any assessment liens ("Tax Claims"), by appropriate legal proceedings in good faith and with due diligence, provided that this shall not be deemed or construed in any way as relieving, modifying or extending **LESSEE**'s covenants to pay or its covenants to cause to be paid any such charges at the time and in the manner provided in this **LEASE** or operate to relieve **LESSEE** from its other obligations hereunder, and shall not cause the sale of the Premises, or any part thereof, to satisfy the same. **LESSOR** agrees to join in any such proceedings if the same is necessary or required by **LESSEE** to legally prosecute such contest of the validity of such Tax Claims upon the reasonable request of **LESSEE**; provided, however, **LESSOR** will not be required to join in any such proceeding wherein the Tax Claims are imposed by **LESSEE**, provided **LESSOR** does not require its own joinder in connection with such Tax Claims. **LESSEE** shall be entitled to any refund of any Tax Claims and such charges and penalties or interest thereon which have been paid by **LESSEE**. In the event that **LESSEE** fails to pay any Tax Claims when due or fails to diligently prosecute any contest of the same, **LESSOR** may, upon thirty (30) days advance written notice to **LESSEE**, pay such charges together with any interest and penalties and the same shall be repayable by **LESSEE** to **LESSOR** pursuant to **Paragraph 5.C** above; provided that, should **LESSOR** reasonably determine that the giving of such notice would risk loss to the Premises, or portion thereof, then **LESSOR** shall give such written notice as is appropriate under the circumstances. Nothing herein shall be deemed to limit **LESSOR's** right to file any Tax Claims for any real property taxes or any assessment liens that are imposed for the period after the Expiration Date.

7. **Default; Remedies:**

A. Failure by the **LESSEE** to perform or abide by any material term, provision, covenant, agreement, undertaking or condition of this **LEASE** after the expiration of all applicable grace and notice periods, if any, set forth in this **LEASE**, including **Paragraph 4.A** above, shall constitute a material default (a "Default") of this **LEASE** for which the **LESSOR** may exercise all such rights and remedies as provided at law, in equity or under this **LEASE** (provided, however, that the foregoing materiality standard for the failure to perform or abide by a term, provision, covenant, agreement, undertaking or condition of this **LEASE** shall

not apply to any such matter that is already qualified to a materiality standard). Without limiting the foregoing, notwithstanding the notice and cure rights under **Paragraph 4.A** above, the failure of **LESSEE** to comply with any of the following within the cure period, if any, specified for any such breach or failure, shall constitute an immediate Default by **LESSEE** under this **LEASE**:

(1) Failure of **LESSEE** to pay any installment of Rent hereunder when payment is due. Notwithstanding the foregoing, **LESSEE** shall have one (1) five day grace period following written notice of non-payment from **LESSOR** of one installment of Rent in any twelve (12) month period during the Term of this **LEASE**.

(2) Failure of **LESSEE** to pay any Additional Rent or other monetary obligation within five (5) days following **LESSOR's** written demand therefore.

(3) Failure of **LESSEE** to maintain all insurance coverages required hereunder in full force and effect at all times during the Term of this **LEASE**.

(4) Failure of the **LESSEE** to replenish the Security Deposit in accordance with **Paragraph 33.B.** of this **LEASE**.

B. Upon the occurrence of a Default under this **LEASE**, **LESSOR** shall have the right, with or without notice or demand, to exercise all such rights and remedies granted or available under this **LEASE**, the laws of the State of Florida, federal law and/or common law (including, without limitation, the right to terminate this **LEASE**) without limiting any of the other remedies that **LESSOR** may have under this **LEASE**.

C. Mediation: In the event a dispute arises which the Parties cannot resolve between themselves, the Parties shall have the option to submit to non-binding mediation. The mediator or mediators shall be impartial, shall be selected by the Parties, and the cost of the mediation shall be borne equally by the Parties. The mediation process shall be confidential to the extent permitted by law.

8. Notices: All notices to the **LESSEE** under this **LEASE** shall be in writing and sent by certified mail return receipt requested, any form of overnight mail delivery or hand delivery to:

If to **LESSEE**: c/o United States Sugar Corporation
111 Ponce de Leon Avenue
Clewiston, Florida 33440
Attention: Malcolm S. (Bubba) Wade, Jr. and
Edward Almeida, Esq.
Fax (863) 902-2120

With a copy to: Gunster, Yoakley & Stewart, P.A.
Attorneys At Law
Las Olas Centre
450 East Las Olas Boulevard, Suite 1400
Fort Lauderdale, FL 33301-4206
Attention: Daniel M. Mackler, Esq. and

Danielle DeVito Hurley, Esq.
Fax: (954) 523-1722

If to **LESSOR**: South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director and General Counsel
Telefax: (561) 681-6233

With a copy to: Chairman of the Governing Board
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406
Attention: Executive Director
Telefax: (561) 681-6233

With a copy to: Florida Department of Environmental Protection
3900 Commonwealth Boulevard, M.S. 49
Tallahassee, FL 32399
Attention: Secretary
Telefax: 850-245-2021

All notices required by this **LEASE**, provided they are addressed as set forth above, shall be considered delivered: (i) on the date delivered if by hand delivery, (ii) on the date upon which the return receipt is signed or delivery is refused or the notice is designated by the postal authorities as not deliverable, as the case may be, if mailed by certified mail return receipt requested and (iii) one day after such notice is deposited with any form of overnight mail service for next day delivery. Either Party may change its address by providing prior written notice to the other of any change of address.

9. **Relationship between Parties:** Nothing contained in this **LEASE** shall be construed to create the relationship of principal and agent, partnership, joint venture or any other relationship between the Parties hereto other than the relationship of **LESSOR** and **LESSEE**.

10. **Assignment and Subletting:**

A. The **LESSEE** shall not assign, delegate or otherwise transfer all or any part of its rights and obligations as set forth in this **LEASE** collectively ("Assignment") or sublease all or any portion of the Premises ("Sublease") without the prior written consent of the **LESSOR** in each instance, which consent may be withheld by **LESSOR** in **LESSOR's** sole and absolute discretion; provided, however, that notwithstanding the foregoing, **LESSOR's** consent to an Assignment shall not be unreasonably withheld so long as **LESSEE** complies with **subparagraph C.** below. Any Assignment made by **LESSEE** without the prior written consent of **LESSOR** shall be void and of no force or effect.

B. In the event **LESSOR** does permit an Assignment by **LESSEE**, then the assignee shall automatically be deemed to have assumed all duties, responsibilities and obligations of **LESSEE** under this **LEASE** from and after the effective date of the Assignment

(including, without limitation, the funding of the Security Deposit Fund pursuant to **Paragraph 33.B.** below) and the **LESSEE** shall, upon such Assignment, be automatically released of its duties, responsibilities or obligations under this **LEASE** from and after the effective date of the Assignment; provided, however, that **LESSEE** shall not be released with respect any of the representation, warranties, duties, responsibilities, liabilities or obligations under this **LEASE** for matters or conditions arising, occurring or existing prior to the effective date of any Assignment. Any sale or other transfer of at least a fifty percent (50%) majority interest of the voting stock of **LESSEE** if **LESSEE** is a corporation (including by way of merger or consolidation), or any sale or other transfer of at least fifty percent (50%) of the general partnership interest in the event **LESSEE** is a general partnership or limited partnership, shall constitute an Assignment for purposes of this **LEASE.**

C. If **LESSEE** shall desire **LESSOR's** consent to any Assignment, **LESSEE** shall notify **LESSOR**, which notice shall include: (i) the name and address of the proposed assignee; (ii) the proposed effective date (which shall not be less than 45 nor more than 180 days after **LESSEE**'s notice); (iii) reasonable evidence that the proposed assignee has the financial ability to perform its obligations under this **LEASE**; and (iv) reasonable evidence that the proposed assignee is experienced in the operation of the Premises for agricultural operations, and such other information as **LESSOR** may reasonably require. In the event that **LESSOR** does not provide written notice of its approval or disapproval of a proposed Assignment within thirty (30) days after receipt of written request from **LESSEE**, then such Assignment shall be deemed to be approved by **LESSOR.**

D. Notwithstanding anything herein to the contrary, **LESSEE** shall have the right to assign its rights under this **LEASE** to an affiliate or subsidiary of **LESSEE** (i.e., an entity in which at least one of the entities comprising **LESSEE** owns more than a 50% voting interest or otherwise effectively controls the same) or to any Person(s) that acquires all or substantially all of the assets of **LESSEE** related to the [****SUGAR LEASE** - sugar cane] [****CITRUS LEASE** - citrus] business and operations, without **LESSOR's** consent, provided, however, **LESSEE** agrees to give **LESSOR** a copy of the fully executed assignment and assumption of this **LEASE** evidencing such transfer and **LESSEE** shall not be released from its obligations hereunder.

E. Notwithstanding anything to the contrary contained in this **LEASE**, including this **Paragraph 10.**, **LESSEE** shall have the right to enter into licenses or Subleases for other parties to use all or portions of the Premises for agricultural crop production without **LESSOR's** consent to the extent the same are entered into in the ordinary course of **LESSEE**'s business consistent with past practices and such licensee or sublessee agrees to comply with Best Management Practices, all of which shall be subordinate to **LESSOR's** interest in the Premises.

F. Notwithstanding anything to the contrary contained in this **LEASE**, upon the Expiration Date, **LESSEE** shall assign to **LESSOR** all permits obtained by **LESSEE** in connection with the Premises to the extent such permits are assignable. To the extent that any licenses or permits that are required for the operation of the Permitted Uses have been assigned to **LESSOR** prior to or during the Lease Term, then **LESSOR** shall take such actions as are reasonably requested by **LESSEE** in order to maintain such licenses and permits in full force and effect during the Lease Term.

11. **Permits and Approvals:**

A. The **LESSEE** shall obtain all federal, state, local, and other governmental approvals and permits necessary for the occupancy, use, maintenance and operation of the Premises, as well as all necessary private authorizations and permits prior to the Commencement Date and shall maintain same throughout the Lease Term. Within five (5) days of demand by **LESSOR** to **LESSEE, LESSEE** shall provide and/or make available to **LESSOR** copies of all permits and authorizations that **LESSEE** is required to obtain pursuant to the provisions of this **LEASE.**

B. The **LESSEE** shall also obtain, and maintain throughout the term of this **LEASE,** any and all applicable **LESSOR (South Florida Water Management District)** permits, including but not limited to **LESSOR** Right of Way Permits and Consumptive Use Permits, as well as permits required by any of the Counties, if applicable. **LESSEE** acknowledges that there is no guarantee that **LESSEE** will receive any permits.

C. The **LESSEE** shall be responsible for compliance with all permit terms and conditions applicable to the Premises, including but not limited to those terms and conditions required by Environmental Resource Permits, Consumptive Use Permits, Surface Water Management Permits, Wetlands Resource Management Permits, Works of the District Permits, and Right of Way Permits issued by **LESSOR** with respect to the Premises. **LESSEE** further acknowledges that **LESSEE**'s responsibility for compliance with all permit terms and conditions applicable to the Premises, shall include, but not be limited to, operating and maintaining the surface water management system and mitigation areas on the Premises in accordance with all permit requirements.

12. **Compliance with Laws, Rules, Regulations and Restrictions: LESSEE** shall comply with, and be the responsible entity for remedying all violations of, all applicable federal, state, local and **LESSOR** laws, ordinances, rules and regulations, permits, and private restrictions, applicable to the Premises and **LESSEE**'s operations conducted thereon and occupancy thereof, as well as **LESSEE**'s performance of this **LEASE. LESSOR** undertakes no duty to ensure such compliance. All rules and regulations under Chapter 373, Florida Statutes pertaining to the Premises remain in full force and effect.

13. **Indemnification:** For good and valuable consideration, the adequacy and receipt of which is hereby acknowledged, the **LESSEE** shall defend, indemnify, save, and hold the **LESSOR** harmless from and against any and all claims, suits, judgments, loss, damage and liability incurred by **LESSOR**, including but not limited to reasonable attorney's fees and costs incurred by **LESSOR**, ("Loss") which arise(s) directly, indirectly or proximately as a result of **LESSEE**'s or its officers', employees', contractors' or agents' use or occupation of the Premises, its operations conducted on the Premises, or from the performance or non-performance of any term, condition, covenant, obligation or provision of this **LEASE** by **LESSEE**, even if such Loss is caused by negligence on the part of **LESSOR**, but not **LESSOR's** or its officers' or employees' gross negligence or willful misconduct. **LESSEE** acknowledges that it is solely responsible for compliance with the terms of this **LEASE. LESSOR** shall have the absolute right to choose its own legal counsel in connection with all matters indemnified for and defended against herein and to the extent that **LESSEE** is providing such defense, **LESSEE** shall have the

right, to the fullest extent permitted by law, to assert any defenses that are available to **LESSOR** in such matter.

14. **LESSEE's Property at Risk:** All of **LESSEE**'s personal property, equipment and fixtures located upon the Premises shall be at the sole risk of **LESSEE** and **LESSOR** shall not be liable under any circumstances for any damage thereto or theft thereof. In addition, **LESSOR** shall not be liable or responsible for any damage or loss to property or injury or death to persons occurring on or adjacent to the Premises resulting from any cause, including but not limited to, defect in or lack of repairs to the improvements located on the Premises, unless the same is caused by **LESSOR's** gross negligence or willful misconduct.

15. **Attorney's Fees:** In any litigation arising out of this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs from the other Party.

16. **Insurance:**

A. **Types of Insurance**. To the extent applicable and unless otherwise agreed to in writing by the **LESSOR**, including, without limitation, to the extent provided in **Schedule "4"**, **LESSEE** shall procure and maintain throughout the Lease Term at **LESSEE**'s sole cost and expense the following types of insurance with deductibles acceptable to **LESSOR** but in no event greater than $100,000 (unless otherwise agreed to herein and other than with respect to windstorm, which deductible shall not exceed 5% of the total insurable value):

(1) **Worker's Compensation Insurance**. If applicable, **LESSEE** shall provide workers' compensation subject to statutory limits and employers liability in the amount of ONE MILLION AND 00/100 DOLLARS ($1,000,000).

(2) **Liability Insurance**. (A) Comprehensive General Liability Insurance relating to the Premises and its improvements and appurtenances, which shall include, but not be limited to, Premises and Operations, Independent Contractors, Products and Completed Operations and Contractual Liability. Coverage shall be no more restrictive than the latest edition of the Commercial General Liability policies of the Insurance Services Office (ISO). This policy shall provide coverage for death, bodily injury, personal injury, and property damage that could arise directly, indirectly or proximately from the performance of this **LEASE**. The minimum limits of coverage shall be $1,000,000 per occurrence and $2,000,000 in the annual aggregate for Bodily Injury Liability and Property Damage Liability and (B) Umbrella liability insurance containing minimum limits of Fifty Million and No/100 Dollars ($50,000,000.00) for the Premises and shall follow form to the underlying General Liability. The limits of liability insurance shall in no way limit or diminish **LESSEE**'s liability under **Paragraph 13** hereof.

(3) Business Automobile Liability Insurance. Business Automobile Liability Insurance protecting **LESSEE** which shall have minimum limits of $5,000,000 per occurrence, Combined Single Limit for Bodily Injury Liability and Property Damage Liability. This shall be an "any-auto" type of policy including owned, hired, non-owned and employee non-ownership coverage.

(4) Casualty Insurance. Property insurance insuring against loss or damage customarily included under so called "all risk" or "special form" policies covering fire, lightning, vandalism, and malicious mischief, and including loss caused by any type of windstorm or hail (including Named Storms) on all Improvements and Personalty. To the extent commercially available, coverage must also include Certified Acts of Terrorism per the current Terrorism Risk Insurance Reauthorization Act of 2007 or any subsequent act, reauthorization or extension thereof. Said Property coverage on the Improvements shall (A) be in an amount equal to one hundred percent (100%) of the full replacement cost with a waiver of depreciation; and (B) contain an agreed amount endorsement with respect to the Property waiving all co-insurance provisions or to be written on a no co-insurance form.

(5) **Environmental Impairment Insurance.** Environmental Impairment Insurance with limits and in form and substance acceptable to **LESSOR**, in its sole and absolute discretion, with a maximum deductible of $250,000 and a policy term extending through the Expiration Date of this LEASE. Said policy must provide coverage for on-site clean-up and third-party claims for unknown pre-existing conditions & new conditions. Coverage must also include business interruption on an actual loss sustained basis and coverage for natural resource damage. Coverage must include above ground storage tanks and any other equipment with a risk of causing environmental impairment.. Acquisition of this insurance shall in no way limit or diminish **LESSEE**'s liability under **Paragraph 19** hereof.

B. **Proof of Insurance.** **LESSEE** shall provide **LESSOR** with current insurance certificates or proof of self-insurance (for Worker's Compensation Insurance) evidencing all insurance required pursuant to this **LEASE** as proof of insurance prior to the Commencement Date and each year, upon renewal, thereafter. Upon request, **LESSEE** shall provide **LESSOR** with complete copies of the policies. All insurance required under this **LEASE** shall be written on a financially sound company acceptable to **LESSOR** with a rating of "A VIII" or better with AM Best or "A" or better with S&P and shall name **LESSOR** as loss payee and as additional insured as their interests may appear as applicable and shall contain a waiver of subrogation in favor of **LESSOR**.

C. **Notice of Insurance Cancellation.** **LESSEE** shall notify **LESSOR** at least fifteen (15) days prior to cancellation or modification of any insurance required by this **LEASE**. Insurance required under **Paragraphs 16.A. (1) (2), (3), (4), and (5)** above of this **LEASE** shall contain a provision that it may not be cancelled or modified until thirty (30) days after written notice to **LESSOR**. In the event **LESSEE** fails to obtain and keep any insurance required hereunder in full force and effect, **LESSOR** may at its option obtain such policies and **LESSEE** shall pay to **LESSOR** the premiums therefore, together with interest at the maximum rate allowed by law, upon demand as "Additional Rent". Without limiting the foregoing, **LESSEE**'s failure to obtain, pay for and keep any insurance required hereunder in full force and effect and unmodified (unless **LESSEE** has obtained **LESSOR's** prior written consent for any such modification) shall constitute an Event of Default under this **LEASE**.

D. **Subcontractor Insurance.** It shall be the responsibility of **LESSEE** to ensure that all subcontractors are adequately insured or covered under its policies.

E. **Business Interruption Insurance & Crop Insurance for Loss of Revenue/Yield.** To the extent applicable and unless otherwise agreed to in writing by the **LESSOR** (A) Business Interruption insurance (1) covering all risks required to be covered by the insurance provided for in subparagraph (iv) above and (2) on an actual loss sustained basis for the period of restoration in an amount equal to one hundred percent (100%) of the projected gross revenues from the operation of the Premises for a period of at least eighteen (18) months after the date of casualty and (3) containing an additional extended period of indemnity endorsement which provides that after the physical loss to the Property has been repaired, the continued loss of income will be insured until such income either returns to the same level it was at prior to the loss or twelve 12 months, whichever first occurs, and notwithstanding that the policy may expire prior to the end of such period. In no event shall the period of indemnification, including the extended period of indemnity, be less than thirty (30) months. The amount of such business income insurance shall be determined prior to the date hereof and at least once each year thereafter based on **LESSEE**'s reasonable estimate of the gross revenues from the Property for the succeeding twenty-four (24) month period; and (B) Crop Insurance providing revenue protection or coverage against yield losses Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall **LESSOR** have any claim to any business interruption insurance that **LESSEE** may procure (or proceeds thereof).

F. **Casualty.** Notwithstanding anything to the contrary in this **LEASE**, in the event of a casualty, **LESSEE** shall be obligated to restore the Premises.

(1) Notwithstanding the foregoing, in the event of a loss or damage to all or any portion of the Premises due to fire or other casualty that causes seventy-five percent (75%) or more of the Premises to be destroyed or damaged during the Lease Term, then **LESSEE** shall have the option to restore such loss or damage, by electing to do so in a written notice to **LESSOR** within thirty (30) days after such loss or damage.

(2) In the event that **LESSEE** elects to restore such loss or damage pursuant to **subparagraph 16.F.(1)** above, then **LESSEE** and **LESSOR** shall endorse any checks received so that the insurance proceeds can be paid into a bank account controlled by a mutually and reasonably acceptable third party escrow agent that will disburse the insurance proceeds to **LESSEE** from time to time as restoration progresses in order for **LESSEE** to timely pay all invoices related to same in accordance with the terms of a mutually and reasonably agreed upon escrow agreement, with any excess or surplus following completion of restoration to be paid to **LESSEE**. To the extent of any loss or damage to the Premises less than or equal to $500,000, **LESSOR's** consent shall not be required for the type, plans or manner of such restoration; provided, however, that prior to commencement of the restoration **LESSEE** shall provide **LESSOR** with a description of the restoration process, an evaluation of the proposed restoration that demonstrates that the same production capacity (if applicable) that was actually achieved prior to such loss or damage will be met after the restoration is complete. No later than forty–five (45) days after completion of the restoration, **LESSEE** shall notify **LESSOR** in writing of such completion and shall provide a certificate from the licensed engineer and/or architect that was engaged by **LESSEE** in connection with the restoration or, if none, a licensed engineer and/or architect that is reasonably acceptable to both parties, which certification (i) identifies the loss or damage to the Premises, (ii) identifies the nature and the amount of costs

incurred by **LESSEE** in restoring the loss or damage, (iii) states that the restoration costs incurred were reasonable to perform the restoration in accordance with all applicable laws, and (iv) if applicable, states that the restoration work is substantially complete and that the restored facility is at least comparable in production capacity to that which was actually achieved immediately prior to the casualty loss or damage.

(3) In the event that **LESSEE** does not restore such loss or damage as provided above, then insurance proceeds for the property damage shall be paid by **LESSEE's** insurer to **LESSOR** with all other recoveries being paid to **LESSEE**.

(4) Notwithstanding anything contained in this **LEASE** to the contrary, to the extent of any loss or damage to the Premises less than or equal to $500,000, **LESSEE** shall have the exclusive right to settle and adjust any claim with its insurance company, at its sole cost and expense, regarding the amount to be paid for any loss or damage under insurance as to which **LESSOR** is named as an additional insured and/or loss payee without **LESSOR's** participation or consent (except that **LESSOR** shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon **LESSEE's** request); otherwise, to the extent of any loss or damage to the Premises greater than $500,000, **LESSOR** shall have the right (i) to participate with **LESSEE** in the adjustment, collection and compromise of any and all claims under all Property insurance policies and (ii) during any Event of Default, to execute and deliver on behalf of **LESSEE** all necessary proofs of loss, receipts, vouchers and releases required by the insurers. If **LESSEE** does not restore any loss or damage to the Premises as provided in **subparagraph 16.F.(1)** above, then **LESSOR** shall have the exclusive right to settle and adjust any claims with the insurance company, at its sole cost and expense, for insurance proceeds for property damage under insurance as to which **LESSOR** is named as an additional insured and/or loss payee without **LESSEE's** participation or consent (except that **LESSEE** shall cooperate in executing any documents/assignments relating to such settlement or adjustment, upon **LESSOR's** request). Except in the case of a monetary Default under this Agreement or as otherwise set forth in this Agreement, however, in no event shall **LESSOR** have any claims or rights with respect to any business interruption or business income insurance proceeds which are payable under any insurance maintained by **LESSEE**.

(5) In the event of a loss or damage to all or any portion of the Premises due to fire or other casualty during the Lease Term, no abatement of rent will occur.

17. Notice to **LESSOR** Concerning Specific Acts: The **LESSEE** agrees to immediately report any incidence of the following to the **LESSOR**:

A. Fire (other than controlled burning permitted pursuant to the terms of this **LEASE**)

B. Death or injury resulting in potential death or permanent disability.

C. Poaching and trespassing

D. Any hazard, condition or situation that is reasonably likely to (i) become a material liability to the **LESSOR**, or (ii) materially damage the Premises or improvements on the Premises of the **LESSOR**.

E. Any activity observed by **LESSEE** on the Premises that **LESSEE** should reasonably know is a violation of rules and regulations promulgated by the **LESSOR**, the Florida Fish and Wildlife Conservation Commission or any other State or local agency.

F. Any written notice of any violation of applicable Federal, State or local laws received by **LESSEE** from the applicable governmental authority.

G. Disposition of pollutants or contaminants per **Paragraph 18** hereof.

18. **Hazardous Materials and Pollutants:**

A. For purposes of this **LEASE**:

(1) "Pollutant" shall mean any hazardous or toxic substance, chemical, material, or waste of any kind, petroleum, petroleum product or by-product, contaminant or pollutant as defined or regulated by Environmental Laws.

(2) "Disposal" shall mean Pollution as defined in § 376.301(37) of the Florida Statutes Annotated (provided that for purposes of this **Paragraph 18.A(2)**, "pollutants" in § 376.301(37) shall mean Pollutants as defined in **Paragraph 18.A(1)** of this **LEASE**) and the release, storage, use, handling, discharge or disposal of Pollutants.

(3) "Environmental Laws" shall mean any applicable federal, state or local laws, statutes, ordinances, rules, regulations or other governmental restrictions.

B. During the Lease Term, **LESSOR** shall have the right to cause the Premises to be monitored in accordance with the Best Management Practices to be developed by mutual agreement by **LESSOR** and **LESSEE**.

C. Prior to the Commencement Date, **LESSOR** has performed Buyer's Environmental Assessment pursuant to the Agreement for Sale and Purchase and performed sampling in those areas of the Premises where **LESSOR** identified concerns regarding the likely presence of Pollutants. Pursuant to the Agreement for Sale and Purchase, **LESSOR** has agreed to perform certain responsibilities for the Remediation of the Pollutants Identified in the Buyer's Environmental Assessment. **LESSEE** and **LESSOR** have no responsibility or liability under the terms of this **LEASE** for the Remediation of the Disposal of Pollutants Identified in Buyer's Environmental Assessment and such Disposal of Pollutants that occurred prior to the Commencement Date.

D. **LESSEE** shall not cause or permit the Disposal of any Pollutants upon the Premises, or upon adjacent lands, during the Lease Term, which violates Environmental Laws. Any Disposal of a Pollutant, whether caused by **LESSEE** or any other third party, in violation of Environmental Laws shall be reported to **LESSOR** immediately upon the knowledge thereof by **LESSEE**.

E. Within ninety (90) days, or such longer time as is reasonably necessary, of delivery of notice from **LESSOR** to **LESSEE**, and except as otherwise provided in **subparagraph C.** above, **LESSEE** shall be solely responsible, at **LESSEE**'s sole cost and

expense, for commencing and thereafter performing, or causing to be performed, any and all assessments, cleanup and monitoring (collectively, "Remediation") of all Pollutants disposed of or otherwise discovered on the Premises or emanating from the Premises to adjacent lands, in violation of Environmental Laws, as a result of use or occupation of the Premises or surrounding lands by **LESSEE**, its agents, licensees, invitees, subcontractors or employees during the Lease Term (provided, however, that the foregoing shall not in any way limit any liability, obligations or rights of **LESSEE** or **LESSOR**, to the extent independently arising under the Agreement for Sale and Purchase, as modified and amended). In the event Remediation is necessary as required in the previous sentence, then **LESSEE** shall furnish to **LESSOR** within a reasonable period of time written proof from the appropriate local, state and/or federal agency with jurisdiction over the Remediation that the Remediation has been satisfactorily completed in full compliance with all Environmental Laws.

F. **LESSEE** understands and acknowledges **LESSOR's** intended use of the Premises as an everglades restoration project (hereinafter referred to as "**LESSOR's Intended Use**") and that it is imperative that **LESSEE's** use of chemicals be monitored in accordance with the Best Management Practices to prevent the release of chemicals in concentrations that may have adverse impacts which jeopardize **LESSOR's** Intended Use, including, but not limited to, adverse impacts to human health or fish and wildlife. Material non-compliance with the Best Management Practices by **LESSEE** its agents, licensees, invitees, subcontractors or employees during the Lease Term, after expiration of applicable grace and notice periods, shall constitute a Default under this **LEASE**.

G. For good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, **LESSEE** shall indemnify; defend and hold harmless **LESSOR**, from and against any and all claims, suits, judgments, loss, damage, and liability which may be incurred by **LESSOR**, including but not limited to **LESSOR's** reasonable attorney's fees and costs, which arises directly, indirectly or proximately as a result of the Disposal of any Pollutants which violate Environmental Laws and are caused by **LESSEE**, its agents, licensees, invitees, subcontractors or employees with respect to the Premises during the Lease Term. This responsibility shall continue to be in effect for any Disposal of Pollutants in violation of Environmental Laws for which **LESSOR** provides written notice to **LESSEE** on or before the third anniversary of the Expiration Date.

H. While this Paragraph 18 establishes contractual liability for **LESSEE** regarding Disposal of Pollutants on the Premises as provided herein, it does not alter or diminish any statutory or common law liability of **LESSEE** for such Disposal of Pollutants, except to the extent provided in **subparagraph C** above.

I. The provisions of this **Paragraph 18** shall survive for three years after the Expiration Date.

19. **Discrimination:** The **LESSEE** shall ensure that no person shall, on the grounds of race, color, creed, national origin, handicap, or sex, be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in any activity under this **LEASE**. The **LESSEE** shall take all measures necessary to effectuate these assurances.

20. **Publicity:** Prior to engaging in any discussions with the news media pertaining to this **LEASE**, the **LESSEE** shall notify the **LESSOR's** Office of Communications and obtain **LESSOR's** prior written consent, which may be given electronically. This includes news releases, media requests for interviews, feature articles, fact sheets, or similar promotional materials.

21. **Affidavit Regarding Ability to Enter into LEASE with State Agency:** The **LESSEE**, by its execution of this **LEASE**, acknowledges and attests that neither it, nor any of its suppliers, subcontractors, or consultants who shall perform work which is intended to benefit the **LESSOR** is a convicted vendor or, if the **LESSEE** or any affiliate of the **LESSEE** has been convicted of a public entity crime, a period longer than 36 months has passed since that person was placed on the convicted vendor list. The **LESSEE** further understands and accepts that this **LEASE** shall be either voidable by the **LESSOR**, in the event there is any misrepresentation or lack of compliance with the mandates of Section 287.133, F.S. The **LESSOR**, in the event of such termination, shall not incur any liability to the **LESSEE** for any work or materials furnished.

22. **Vacation of Premises:** Upon the expiration or termination of this **LEASE** as to any portion of the Premises, the **LESSEE** shall promptly vacate and surrender the Premises or applicable portion of the Premises to **LESSOR**. The **LESSEE** shall remove all personal property of the **LESSEE** and shall restore such vacated portion of the Premises to its original condition existing as of the Commencement Date of this **LEASE**, subject to reasonable wear and tear, casualty not subject to restoration pursuant to **Paragraph 16.F** and property taken by condemnation pursuant to **Paragraph 36**, within a period not to exceed five (5) calendar days from the Expiration Date. Notwithstanding anything in this **LEASE** to the contrary, **LESSEE**, at its sole cost and expense, shall clean up and remove all abandoned personal property (including but not limited to mobile home trailers), refuse, garbage, junk, rubbish, solid waste, trash and debris from the portion of the Premises so vacated and shall deliver the portion of the Premises so vacated with cane stubble thereon to the extent the same exists from the then last harvest and, except as provided in **Paragraph 2.K** above, **LESSEE** is not obligated to replant any harvested crops or to disk any portion of the Premises after any harvest by **LESSEE**.

23. **Holding Over:** Any holding over without **LESSOR** consent shall constitute a Default by **LESSEE** and entitle **LESSOR** to reenter the Premises and collect monthly rent equal to 150% of the Rent at such time, together with the Additional Rent.

24. **Insolvency or Bankruptcy:** The appointment of a receiver to take possession of all or substantially all of the assets of **LESSEE**, or an assignment of **LESSEE** for the benefit of creditors, or any action taken or suffered by **LESSEE** under any insolvency, bankruptcy, reorganization or other debtor relief proceedings, whether now existing or hereafter amended or enacted, shall at **LESSOR's** option constitute a breach of this **LEASE** by **LESSEE**. Upon the happening of any such event or at any time thereafter, this **LEASE** shall terminate five (5) days after written notice of termination from **LESSOR** to **LESSEE**. In no event shall this **LEASE** be assigned or assignable by operation of law or by voluntary or involuntary bankruptcy proceedings or otherwise and in no event shall this **LEASE** or any rights or privileges hereunder be an asset of **LESSEE** under any bankruptcy, insolvency, reorganization or other debtor relief proceedings.

25. **Sale by LESSOR:** Notwithstanding anything contained in this **LEASE** to the contrary, in the event of a sale or conveyance by **LESSOR** of the Premises or any portion thereof or in the event of an assignment of this **LEASE** by **LESSOR**, any such assignment, sale or conveyance shall automatically operate to release **LESSOR** from any future liability upon any of the terms, provisions, covenants or conditions, express or implied, herein contained in favor of **LESSEE**, provided that the purchaser of the Premises or assignee of this **LEASE** executes a non-disturbance agreement in favor of **LESSEE** and agrees to be bound by the terms of this **LEASE** and in such event **LESSEE** agrees to look solely to the successor in interest of **LESSOR** in and to this **LEASE**. This **LEASE** shall not be affected by any such sale, and **LESSEE** agrees to attorn to the purchaser or assignee.

26. **Estoppel Confirmation:** **LESSEE** and **LESSOR** shall, within seven (7) days after written request of the other Party, execute an estoppel letter regarding the status of this **LEASE** which may be relied upon by any lender, mortgagee or purchaser of the Premises or the Crops and any assignee of either Party's interest in this **LEASE**. Such estoppel letter shall confirm the terms, conditions and provisions of this **LEASE**; that this **LEASE** is in full force and effect; that this **LEASE** is unmodified, or if modified, the provisions of any modifications; that neither **LESSOR** nor **LESSEE** is in default of any of the terms, conditions or provisions of this **LEASE**; that **LESSEE** has no offsets, counterclaims or defenses to the payment of any Rent or Additional Rent; that **LESSEE** has no options to renew or purchase, and any other statements which **LESSOR** or **LESSEE** reasonably requests. In the event **LESSEE** or **LESSOR** fails to comply with any of the foregoing, such failure to comply shall automatically be deemed a confirmation by such Party that all items contained in the estoppel letter requested by the other Party are true and correct and any lender, mortgagee or purchaser of the Premises or the Crops, and any assignee of **LESSOR's** interest in this **LEASE** may rely on such confirmation.

27. **Capital Improvements and Alterations:**

A. **LESSEE** shall not make any alterations, additions or improvements, whether capital, internal or external, (collectively, "Alterations") in, on or to the Premises or any part thereof without the prior written consent of **LESSOR**, which consent may be withheld in **LESSOR's** sole and absolute discretion.

B. Any Alterations to the Premises, except for **LESSEE's** movable furniture and equipment, shall immediately become **LESSOR's** property and, at the end of the Lease Term, shall remain on the Premises without compensation to **LESSEE**; provided, however, that any such movable furniture and equipment, otherwise belonging to **LESSEE**, but remaining on the Premises at the expiration or other termination of this **LEASE** shall also become the property of **LESSOR**.

C. In the event **LESSOR** consents to the making of any Alterations by **LESSEE**, the same shall be made by **LESSEE**, at **LESSEE's** sole cost and expense, in accordance with the plans and specifications previously approved in writing by **LESSOR**. **LESSEE** shall comply with all applicable laws, including but not limited to Construction Lien Law of the State of Florida, ordinances, regulations, building codes, and obtain all required permits, inspections, and certificates as may be required by all governmental agencies having jurisdiction thereof.

28. **Liens:**

A. **LESSEE** shall keep the Premises free from any liens, including, but not limited to mechanic's liens, arising out of any work performed, materials furnished or obligations incurred by **LESSEE**.

B. The **LESSEE** herein shall not have any authority to incur liens for labor or material on the **LESSOR's** interest in the Premises and all persons contracting with the **LESSEE** for the destruction or removal of any building or for the erection, installation alteration, or repair of any building or other improvements on the Premises and all materialmen, contractors, mechanics and laborers, are hereby charged with notice that they must look to the **LESSEE** and to the **LESSEE's** interest only in the Premises to secure the payment of any bill for work done or material furnished during the rental period created by this **LEASE**.

C. In the event that **LESSEE** shall not, within twenty (20) days following the imposition of any such lien, cause the same to be released of record by payment or posting of a property bond, **LESSOR** shall have, in addition to all other remedies provided herein and by law, the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including payment of the claim giving rise to such lien. All such sums paid by **LESSOR**, including, but not limited to reasonable attorney's fees and expenses incurred by it in connection therewith, together with interest at the maximum rate allowed by law, shall be considered Additional Rent and shall be payable to **LESSOR** by **LESSEE** on demand.

D. **LESSOR** shall have the right at all times to record in the public records or post and keep posted on the Premises any notice permitted or required by law, or which **LESSOR** shall deem proper, for the protection of **LESSOR**, the Premises, the improvements located thereon and any other Party having an interest therein, from mechanic's and materialmen's liens, and **LESSEE** shall give to **LESSOR** at least thirty (30) days prior notice of commencement of any construction on the Premises.

E. Pursuant to Sections 713.01(21) and 713.10, the interest of **LESSOR** in the Premises and the improvements located thereon shall not be subject to liens for improvements made by **LESSEE** and such liability is expressly prohibited.

F. Notwithstanding anything to the contrary contained in this **LEASE**, **LESSEE** may from time to time, in its ordinary course of business, grant to certain lenders selected by **LESSEE** and its affiliates (the "Lenders") a lien on and security interest in all assets and personal property located on the Premises and owned by **LESSEE**, including, but not limited to, all crops (e.g., citrus and sugar cane), crop products, inventory, goods, machinery and equipment owned by **LESSEE** (but expressly excluding **LESSEE's** right, title and interest in, to or under this **LEASE**) ("**LESSEE's Property**") as collateral security for the repayment of any indebtedness to the Lenders and all amendments, modifications and renewals thereof (the "Indebtedness"). The Lenders may, in connection with any foreclosure or other similar action relating to the **LESSEE's** Property, enter upon the Premises (or permit their representatives to do so on their behalf) in order to implement an action for default, foreclosure and/or any other remedy that Lenders may have against **LESSEE** and/or **LESSEE's** Property under the terms and conditions of the Indebtedness without liability to **LESSOR**, to the extent any of **LESSEE's**

Property is located on the Premises. The Lender's rights with respect to access to the Premises and the crops thereon shall be strictly limited to the then current harvest season, subject to Lenders exercise of due care in connection with such access. **LESSOR** hereby agrees that any security interest, lien, claim or other similar right, including, without limitation, rights of levy or distraint for rent and **LESSOR's** statutory lien rights that **LESSOR** may have in or on **LESSEE's** Property, whether arising by agreement or by law, are hereby subordinate to the liens and/or security interests in favor of the Lenders which secure the Indebtedness, whether currently existing or arising in the future. Nothing contained herein shall be construed to grant or permit a lien upon or security interest in any of **LESSOR's** assets or **LESSEE's** right, title or interest in, to or under this **LEASE**. **LESSOR** agrees to accept timely performance on the part of any of the Lenders or their agents or representatives as though performed by **LESSEE** to cure any default or condition for termination (although the Lenders shall have no obligation to do so) to the extent such cure is completed within the applicable cure period **LESSEE** has to cure any such default under this **LEASE**. Subject to compliance with the terms and conditions of this **Paragraph 28.F.**, the foregoing subordination shall be automatic and self-effective without the necessity to execute any further documentation evidencing the same; however, without limiting the effectiveness of such subordination, **LESSOR** agrees to promptly execute any additional documents reasonably required by the Lenders to evidence **LESSOR's** subordination of its lien rights described herein. Notwithstanding anything in this **LEASE** to the contrary, **LESSEE** hereby agrees that any Loss incurred by **LESSOR** due to bodily injury or property damage in connection with: (i) the Indebtedness; (ii) actions by any of the Lenders; (iii) any subordination by **LESSOR** set forth herein; or (iv) any other matters contained in this **Paragraph 28.F.**, all shall fall under the indemnification provisions in favor of **LESSOR** set forth in **Paragraph 13.** above.

29. Repair: **LESSEE** covenants and agrees that **LESSEE** shall maintain the Premises (which excludes the crops) in its original condition existing as of the Commencement Date of this **LEASE**, subject to reasonable wear and tear, casualty pursuant to **Paragraph 16.F** and condemnation pursuant to **Paragraph 36**. **LESSEE** shall, at **LESSEE's** expense, maintain and preserve the Premises in the state of condition and repair as required in the immediately preceding sentence and make all necessary repairs to the Premises and all improvements, fixtures and equipment located thereon, if any, including but not limited to repairs to all interior, exterior, roof and structural portions of the Premises, all culverts, all pumps and pumping stations, all paved surfaces, windows, landscaping and all electrical, plumbing, HVAC and other machinery located on the Premises consistent with repair standard set forth in this paragraph. Subject to the other provisions of this **LEASE** that may provide to the contrary, including **Paragraph 16.F, Paragraph 35** and **Paragraph 36**. **LESSEE** shall be responsible for all such repairs and maintenance whether caused by acts of **LESSEE**, its agents, servants, employees, customers, guests, licensees or by acts of third parties, governmental regulations, acts of God, casualties, or any other reason.

30. Existing Interests in Premises: Pursuant to Section 373.099, Florida Statutes, **LESSOR** does not warrant or represent that it has title to the Premises. **LESSEE's** occupancy of the Premises shall be subject to the rights of others existing as of the day immediately preceding the Commencement Date of this **LEASE** which are set forth in easements, restrictions, reservations, all matters of public record and all other encumbrances affecting the Premises as of the day immediately preceding the Commencement Date of this **LEASE**.

31. **LESSOR Inspection, Ingress and Egress:**

A. The right of entry is hereby reserved by the **LESSOR**, for itself and its officers, agents, employees, contractors, subcontractors, and assigns, to enter upon and travel through and across the Premises for the purposes of: inspections, maintenance, and for any lawful purpose including, but not limited to, inspecting the Premises to ensure the **LESSEE's** performance of its obligations under this **LEASE**; sampling and monitoring the **LESSEE's** use of chemicals and pesticides on the Premises; performing environmental remediation or performing any work or repairs, which the **LESSOR** may determine is necessary by reason of the **LESSEE's** default under the terms of this **LEASE**; exhibiting the Premises for lease, sale or mortgage financing; conducting inspections, investigations, soil borings, surface and groundwater sampling, monitoring, and any other testing, sampling, or other investigation necessary to support the engineering design and/or any other analyses associated with the future use of the Premises. The **LESSEE** shall have no claim for damages of any character on account thereof against the **LESSOR** or any officer, agent, or assign thereof to the extent provided in this **LEASE**.

B. **LESSOR** agrees that from the Commencement Date through the Expiration Date, all officers, employees, contractors and agents of **LESSOR** shall have at all reasonable times upon reasonable advance notice to Edward Almeida, Esq., Vice President of Legal Affairs at (863) 902-2120 the right to enter upon the Premises for the purposes set forth in **subparagraph A** above; provided however that: (a) any contractors or agents of **LESSOR** shall first provide a certificate of insurance evidencing that such contractor or agent carries commercial general liability insurance in an amount not less than $1,000,000 combined single limit per occurrence for bodily injury, personal injury and property damage liability, which certificate shall name **LESSEE** as an additional insured thereunder; and (b) all such inspections, investigations and examinations by **LESSOR** or **LESSOR's** officers, employees and accredited agents shall be conducted in such a manner so as (i) not to cause any lien or claim of lien to exist against the Premises, (ii) not to unreasonably interfere with the operation of **LESSEE** or its business or its tenants and occupants; and (iii) at all times to comply with all of **LESSEE's** or its tenants' safety standards and requirements.

C. **LESSOR** agrees to be responsible for: (x) any property damage that arises out of or is caused by **LESSOR** or its officers, employees, contractors and agents while such persons are acting within the proper scope of conducting inspections of, or accessing, the Premises, provided that with respect to any damaged sugarcane crop, **LESSEE's** exclusive remedy shall be limited to compensation from **LESSOR** in the amount of $2,400 per acre of damaged sugarcane crop, subject to proration where the damage is less than a full acre, (y) to the extent found legally responsible, any property damage that arises out of or is caused by **LESSOR's** gross negligence or willful misconduct, or its officers, employees, contractors and agents, while acting outside the proper scope of conducting inspections of, or accessing, the Premises (e.g., negligence); and (z) to the extent found legally responsible, any personal injury arising from **LESSOR's** or its officers', employees', contractors' and agents' inspections of or access to the Premises (but the foregoing shall only be applicable to **LESSOR** only as to its gross negligence or willful misconduct). **LESSOR** shall promptly restore, if applicable, any property damage described above. For the purposes hereof, the term "to the extent found legally responsible" shall be deemed to mean "to the extent that **LESSOR** has the legal authority to

agree to be responsible for the acts of its officers, employees, contractors and agents". **LESSEE** acknowledges that **LESSOR** has not made any representation or warranty to **LESSOR** as to, nor has **LESSOR** waived any right to claim that it does not have, legal authority to agree to the provisions of this **Paragraph 31**. The provisions of this **Paragraph 31** shall survive the Expiration Date or any termination of this Agreement for a period of one (1) year.

32. **Miscellaneous Provisions:**

A. **Invalidity of LEASE Provision:** Should any term or provision of this **LEASE** be held, to any extent, invalid or unenforceable, as against any person, entity or circumstance during the term hereof, by force of any statute, law, or ruling of any forum of competent jurisdiction, such invalidity shall not affect any other term or provision of this **LEASE**, to the extent that the **LEASE** shall remain operable, enforceable and in full force and effect to the extent permitted by law.

B. **Inconsistencies:** In the event any provisions of this **LEASE** shall conflict, or appear to conflict, the **LEASE**, including all exhibits, attachments and all documents specifically incorporated by reference, shall be interpreted as a whole to resolve any inconsistency.

C. **Governing Law and Venue:** The laws of the State of Florida shall govern all aspects of this **LEASE**. In the event it is necessary for either Party to initiate legal action regarding this **LEASE**, venue shall be in the Fifteenth Judicial Circuit for claims under state law and the Southern District of Florida for any claims which are justiciable in federal court.

D. **Amendment:** This **LEASE** may be amended only with the prior written approval of **LESSOR** and **LESSEE**.

E. **Waiver:** Failures or waivers to enforce any covenant, condition, or provision of this **LEASE** by the Parties, their successors and assigns shall not operate as a discharge of or invalidate such covenant, condition, or provision, or impair the enforcement rights of the Parties, their successors and assigns nor shall it be construed as a waiver or relinquishment for the future enforcement of any such covenant, condition or right but the same shall remain in full force and effect. Furthermore, the acceptance of Rent, any Additional Rent or a partial payment of same by **LESSOR** shall not constitute a waiver of any preceding breach by **LESSEE** of any provision of this **LEASE** nor a waiver of the right to receive full payment of Rent or Additional Rent.

F. **Final Agreement:** This **LEASE** states the entire understanding between the Parties with respect to the use and occupancy of the Premises after the Commencement Date and supersedes any written or oral representations, statements, negotiations, or agreements to the contrary. The **LESSEE** recognizes that any representations, statements or negotiations made by **LESSOR'S** staff do not suffice to legally bind the **LESSOR** in a contractual relationship unless they have been reduced to writing, authorized, and signed by an authorized representative of **LESSOR**. This **LEASE** shall bind the Parties, their assigns, and successors in interest.

G. **Time of the Essence:** Time is of the essence with respect to every term, condition and provision of this **LEASE.**

H. **Survival:** The provisions of **Paragraphs 13, 18, 22 and 23** shall survive the expiration or termination of this **LEASE.** In addition, any covenants, provisions or conditions set forth in this **LEASE** which by their terms bind **LESSEE, LESSOR** or both **LESSOR** and **LESSEE** after the expiration or termination of this **LEASE,** shall survive the expiration or termination of this **LEASE** for a period of two (2) years, except for the provisions of **Paragraph 18,** which shall survive as and to the extent provided therein.

I. Prohibition Against Recording: **LESSEE** shall not record this **LEASE** or any portion or any reference thereto without the prior written consent of **LESSOR,** which consent may be withheld by **LESSOR** in **LESSOR's** sole and absolute discretion. In the event **LESSEE** violates any of the foregoing, this **LEASE** shall terminate at **LESSOR's** option or **LESSOR** may declare a Default hereunder and pursue any and all of its remedies provided in this **LEASE.**

J. **WAIVER OF JURY TRIAL. AS INDUCEMENT TO BOTH PARTIES AGREEING TO ENTER INTO THIS AGREEMENT, LESSOR AND LESSEE HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY EITHER PARTY AGAINST THE OTHER PARTY PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE. EACH OF THE PARTIES CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS LEASE BY, AMONG OTHER THINGS, THE ACTUAL WAIVERS AND CERTIFICATIONS OF THIS SUBPARAGRAPH J.**

33. **Special Clauses:**

A. **Radon Gas:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.

B. **Security Deposit:**

(1) On the Commencement Date and until the **LESSEE** has assigned all of its interest under this **LEASE** pursuant to an Assignment permitted hereunder, the Security Deposit Fund and the Escrow Agreement (as defined below) shall refer to, respectively, the "General Escrow Fund" and the "General Escrow Agreement" (as such terms are defined in the Agreement for Sale and Purchase). Upon an Assignment permitted hereunder, **LESSEE** shall fund an escrow as a security deposit in the amount of Four Million and No/100 Dollars ($4,000,000.00) to secure the performance of all of **LESSEE's** obligations under this **LEASE**

(the "Security Deposit Fund") which, at **LESSEE**'s option, shall be in the form of cash (a "Cash Escrow") held by an escrow agent mutually acceptable to **LESSEE** and **LESSOR** ("Escrow Agent") pursuant to an escrow agreement in form attached hereto as **Schedule "5"** ("Escrow Agreement"), or a Letter of Credit (as defined in **subparagraph 33.B.(2),** below). Upon the funding of such Security Deposit Fund by the assignee, **LESSOR** shall have no further rights or claims upon or with respect to the General Escrow Fund or General Escrow Agreement for matters related to the **LEASE**.

(2) Letter of Credit. In the event **LESSEE** elects to post a letter of credit pursuant to **subparagraph 33.B.(1),** above for the Security Deposit Fund ("Letter of Credit"), it shall: (a) be in the form of an irrevocable commercial letter of credit in form attached hereto as **Schedule "6"** with a term of at least twelve (12) months, (b) be issued by **LESSEE's** lender under **LESSEE's** revolving credit facility (subject to **LESSOR's** approval of such lender at the time of Closing), naming Escrow Agent as beneficiary, pursuant to the Escrow Agreement; (c) provide for Draws (as defined and set forth below) by Escrow Agent; and (d) have an "evergreen" clause and be renewed automatically each year by the issuing bank, unless the bank gives written notice to the beneficiary at least thirty (30) days prior to the expiration date of the then existing Letter of Credit that the bank elects that it not be renewed. In the event the Letter of Credit is not timely renewed and **LESSEE** has not replaced the same within ten (10) business days prior to the expiration thereof, then Escrow Agent may draw upon the same and hold the proceeds pursuant to the terms of the Escrow Agreement. Each Letter of Credit shall be assignable or transferable to any **LESSOR** Credit Provider (in connection with any collateral assignment thereof) or any transferees, successors or assigns of **LESSOR** that becomes landlord under this **LEASE**. For the purposes of this **LEASE**, the term "Credit Provider" shall be deemed to mean **LESSOR's** lender/financing trustee/credit enhancer/underwriter.

(3) Draws Upon Cash Escrow and Letter of Credit. The Escrow Agreement shall provide that the Escrow Agent may only draw upon a Letter of Credit or Cash Escrow in favor of **LESSOR** (a "Draw") in the event: (a) an agreement has been executed by **LESSEE** and **LESSOR** agreeing upon the reason for, and amount of, the Draw; or (b) **LESSOR** delivers written notice to Escrow Agent of any monetary Default by **LESSEE** under the **LEASE**; or (c) all appeal periods have expired following a final order by a court of law rendering a monetary judgment against **LESSEE** in favor of **LESSOR**. Upon each such Draw request, Escrow Agent shall promptly release the Draw to **LESSOR**.

(4) Replenishing of Cash Escrow or Letter of Credit during the Term. **LESSEE** shall be required to replenish the Security Deposit Fund during the Lease Term in the event any Draws are made against the Security Deposit Fund in accordance with this **Paragraph 33.B.** within fifteen (15) days of such depletion. Any failure by **LESSEE** to replenish the Security Deposit Fund within fifteen (15) days of such depletion shall constitute a Default under this **LEASE**.

(5) Release of Cash Escrow and Letter of Credit Following Expiration Date. The Escrow Agreement for the Security Deposit Fund shall provide that Escrow Agent shall continue to hold the Security Deposit Fund until three (3) years after the later of (i) the final Expiration Date of this **LEASE** or (ii) the final expiration date of any other lease to which the Escrow Agreement is applicable (the "Scheduled Release Date"), provided that any claims must

be made within the applicable survival period as provided under this **LEASE**, provided, however, that if there are any pending claims relating to any portion of such deposit on such Scheduled Release Date, then Escrow Agent shall continue to hold a portion of such deposit in accordance with the Escrow Agreement in the reasonably estimated amount necessary to satisfy such claim(s) until such claim(s) is resolved, and shall release the remaining amount of such deposit to **LESSEE**.

C. **Site Investigation: LESSEE** is responsible for examining the Premises and satisfying itself as to the general and local conditions, particularly water level conditions that are likely to impact **LESSEE**'s operation and those conditions bearing upon the availability of water, electric power, communication and road and access facilities. Failure on the part of **LESSEE** to acquaint itself with all available information pertaining to the Premises will not relieve **LESSEE** from the responsibility of furnishing the required facilities and services and for compliance with the terms and conditions of this **LEASE**. **LESSOR** assumes no responsibility or obligation to provide any roads or other facilities of whatever nature or for any understanding or representation made by any of its officers or agents during or prior to final execution of this **LEASE** unless these provisions expressly provide for the furnishing of such facilities and such understanding or representation is specifically stated in this **LEASE**.

D. **Prohibited Activities: LESSEE** may perform maintenance of personal property, including but not limited to changing oil or fluids and servicing filters, on the Premises and store any fuel, or store or utilize any fuel tanks (whether empty or containing fuel or other hazardous substances), fuel trailers, hoses or any other fueling mechanisms on the Premises as reasonably necessary for normal business operations; provided, however, that any maintenance and fuel storage or handling on the Premises shall comply with Environmental Law and the applicable Best Management Practices and **LESSEE** shall remove all fuel trailers, hoses, tanks or other fueling mechanisms from the Premises that are owned by **LESSEE** prior to the expiration or termination of this **LEASE**.

E. **Water Levels: LESSEE** hereby waives any and all claims on the part of the **LESSEE**, which may arise or be incident to regulation of water levels associated with the Premises by the **LESSOR** and/or the U.S. Army Corps of Engineers, so long as such regulation is in accordance with the rules and regulations applicable thereto.

F. **Navigation: LESSEE** shall not do or cause to be done anything whereby the full and free use by the public of the water areas of and surrounding the Premises will suffer unreasonable interference. This condition does not apply to temporary dockage and/or mooring facilities that may be provided by **LESSEE** pursuant to and in accordance with the provisions of this **LEASE**.

G. **Compliance with Minimum Wage Law:** The **LESSEE** shall comply with the Fair Labor Standards Act, 29 USCS 201, et seq. The Act is the minimum wage law. Its requirement that the **LESSEE** pay "not less" than the rates so determined presupposes the possibility that the **LESSEE** may have to pay higher rates.

H. **Additional Requirements:**

(1) **LESSEE** shall not install or permit to be installed pit or vault latrines.

(2) **LESSEE** will allow the discharge of firearms on the Premises only as permitted by Florida law and consistent with the exercise of reasonable care and prudence, and **LESSEE** will not display or permit others to display firearms in a reckless manner.

(3) **LESSEE** shall not discharge nor permit others to discharge sewage effluent into the water areas of and surrounding the Premises provided, however, that **LESSOR** acknowledges and accepts the presence of currently existing septic systems on the Premises to the extent such systems are in compliance with applicable law.

(4) **LESSEE** shall not engage in any business activity on the Premises not expressly authorized in this **LEASE** unless otherwise authorized in writing by **LESSOR**.

(5) Except for the Permitted Uses (as to which no consent of **LESSOR** is required), **LESSEE**: shall not permit or suffer any nuisance on the Premises or the commission of waste thereon; shall not conduct mining operations or drill for oil or gas upon the Premises; shall not remove sand, gravel, or kindred substance from the ground; or shall not, in any manner, substantially change the contour or condition of the Premises unless prior approval is granted in writing by **LESSOR**, which approval may be withheld in **LESSOR's** sole discretion.

(6) **LESSEE** will use the Premises and all rights and privileges herein granted to the extent needed in carrying out the true intent and purpose of this **LEASE**.

(7) **LESSEE** shall cooperate with **LESSOR**, its employees, agents, and assigns in carrying out the intent and purposes of this **LEASE**.

l. **Safety:**

(1) It is the **LESSEE's** sole duty to provide safe and healthful working conditions to its employees on and about the Premises. The **LESSOR** assumes no duty for supervision of the **LESSEE**.

(2) The **LESSEE** shall provide first aid services and medical care to its employees. The **LESSOR** assumes no duty with regard to the supervision of the **LESSEE**.

(3) The **LESSEE** shall develop and maintain an effective fire protection and prevention program and good housekeeping practices on the Premises throughout the Lease Term.

(4) The **LESSOR** may order that the **LESSEE** halt operations under this **LEASE** if a condition of immediate danger to the public and/or **LESSOR's** employees, equipment or property exists. This provision shall not shift responsibility or risk of loss for injuries or damage sustained from the **LESSEE** to the **LESSOR**, and the **LESSEE** shall remain solely responsible for compliance with all safety requirements and for the safety of all persons and property on the Premises.

(5) The **LESSEE** shall instruct employees required to handle or use toxic materials or other harmful substances regarding their safe handling and use, including instruction on the potential hazards, personal hygiene and required personal protective measures.

(6) The **LESSEE** shall comply with the standards and regulations set forth by the Occupational Safety and Health Administration (OSHA), the Florida Department of Labor and Employment Security and all other appropriate federal, state, local or District safety and health standards.

(7) The **LESSEE** shall take the necessary precautions to protect customers and other members of the public that may be on or near the Premises from harm due to the operations of the **LESSEE**.

J. **Advertising and Commercial Activity:** There shall be absolutely no advertising, either visual or audio, placed on or conducted on the Premises except for names and logos appearing on **LESSEE**'S vehicles, gates or as otherwise may be existing on the date of this **LEASE**.

K. **Lead Based Paint Disclosure:** See Lead Based Paint Disclosure attached hereto and made a part hereof as **Schedule "7"**, if applicable.

L. **Inspection Rights:** The **LESSEE** shall maintain records and the **LESSOR** shall have inspection and audit rights as follows:

(1) **Maintenance of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, **LESSEE** shall maintain all financial and non-financial records and reports related to the Premises or this **LEASE**, including but not limited to, records related to the application of pesticides and fertilizers. Such records shall be maintained and made available for inspection for a period of five (5) years from completing performance and receiving final payment under this **LEASE**.

(2) **Examination of Records:** Subject to confidentiality agreements with third parties and the designation of certain records as "trade secret" documents under Florida law, **LESSOR** or its designated agent shall have the right to examine in accordance with generally accepted governmental auditing standards all records related to the Premises or directly or indirectly related to this **LEASE**. Such examination may be made at any time during the Lease Term and through and including five (5) years from the date of final payment under this **LEASE** and upon reasonable notice, time and place.

(3) Records that pertain to the Premises or this **LEASE**: Notwithstanding the provisions of **subparagraph (1)** and **subparagraph (2)** above, in no event shall **LESSEE** be obligated to maintain or provide any financial or accounting information (e.g., pro-formas, tax returns, production reports, financial statements, appraisals, etc) or other information that pertains to **LESSEE**'s business operations or assets other than the Premises, [****SUGAR LEASE** - provided that **LESSEE** agrees to maintain and, upon request, provide reports showing the acreage of sugar cane planted, the tons of sugar cane harvested from such planted acreage, and the "sucrose % cane" of such harvested acreage**][****CITRUS LEASE** -

provided that **LESSEE** agrees to maintain and, upon request, provide reports showing the acreage of citrus trees and the boxes of citrus harvested from such acreage**], in order to facilitate land exchanges or dispositions related to surplus portions of the Premises by **LESSOR**, subject to the trade secret protocol established by **LESSEE**.

(4) With respect to any such information made available to **LESSOR** pursuant to this **subparagraph L.** that is proprietary or "Trade Secret" (as defined under Section 812.081, Florida Statutes), **LESSOR** shall follow the trade secret protocol established by **LESSOR** and **LESSEE**.

(5) Extended Availability of Records for Legal Disputes: In the event that the **LESSOR** should become involved in a legal dispute with a third party arising from performance under this **LEASE**, the **LESSEE** shall extend the period of maintenance for all records relating to the **LEASE** until the final disposition of the legal dispute, and all such records shall be made readily available to the **LESSOR**.

M. **Public Access:** The **LESSEE** shall allow public access to all **LEASE** related documents in accordance with the provisions of Chapter 119, Florida Statutes, subject to all applicable exemptions and only as and to the extent Chapter 119 is actually applicable to **LESSEE** (it being agreed that this **subparagraph M.** is not an admission or agreement by **LESSEE** that Chapter 119 is applicable thereto). Should the **LESSEE** assert any exemptions to the requirements of Chapter 119 and related Statutes, the burden of establishing such exemption, by way of injunctive or other relief as provided by law, shall by upon the **LESSEE**.

N. **Cooperation:** From the Commencement Date hereof through the Expiration Date, **LESSEE** shall cooperate in good faith with **LESSOR's** Credit Providers to provide information related to the Premises (and not the **LESSEE**'s business or other assets) and necessary for the original issuance or refinancing of the Certificates of Participation, so long as such Credit Providers execute and deliver to **LESSEE** a confidentiality agreement reasonably acceptable to **LESSEE**. **LESSOR** shall be responsible for any and all actual, out-of-pocket costs and expenses incurred by **LESSEE** in providing the information pursuant to this subparagraph (e.g., copying fees, but not including attorneys' fees incurred by **LESSEE** in connection with such requests).

O. **[**SUGAR LEASE – Intentionally Deleted**]**

[CITRUS LEASE - Loss of Trees Due to Canker:**

(1) If the citrus trees on the Premises are destroyed by or infected with Canker or other diseases or parasites, or are destroyed by civil authorities in connection with programs to control the spread of Canker or other diseases or parasites, **LESSOR** shall be entitled to receive all tree replacement payments or awards from the federal, state or local authorities made for, or with respect to, the destroyed trees. **LESSOR** will decide, in its sole and absolute discretion, how such payments or awards will be used. **LESSOR** may assign this right or transfer the payments or awards received, if it so elects, to **LESSEE**; provided, however, that **LESSEE** shall use any funds received or awards made as the **LESSOR** directs. **LESSEE** will support and assist **LESSOR** in connection with any applications by **LESSOR** for such payments

or awards. **LESSEE** shall retain all Casualty insurance proceeds from policies carried by **LESSEE** insuring against the loss of citrus trees as a result of canker or other diseases or parasites.

(2) **LESSEE** shall be entitled to payments or awards from the federal, state or local authorities made for, or with respect to, lost future production, reduced by any insurance that **LESSEE** may have for lost future production.**]

P. **Operations Contracts:** To the extent that **LESSEE** may, at any time, desire to enter into any contract, license, sublease or other agreement in connection with **LESSEE**'s operations which is not terminable without penalty upon thirty (30) days notice and is binding on the Premises or **LESSOR** after the Expiration Date, then **LESSEE** shall give a copy of such agreement to **LESSOR**. If **LESSOR** consents at its sole and absolute discretion to **LESSEE**'s execution of such contract, license, sublease or other agreement, then, to the extent that the term thereof extends beyond the Expiration Date, **LESSOR** shall be deemed to have agreed to assume the provisions of such contract, license, sublease or other agreement from and after the date thereof (each, a "New Agreement"). Even though the foregoing assumption shall be automatic and self-effective without the necessity to execute any further documentation evidencing the same, **LESSOR** agrees to promptly execute any additional documents reasonably required by **LESSEE** to evidence **LESSOR's** assumption of such contract, license, sublease or other agreement described in this Paragraph. In the event that **LESSEE** submits a contract, license, sublease or other agreement to **LESSOR** for its approval pursuant to this Paragraph and, unless **LESSOR** advises **LESSEE** in writing within forty-five (45) days after receipt thereof that **LESSOR** has not approved such contract, license, sublease or other agreement, then the same shall be deemed to be approved thereby.

34. **Covenant of Quiet Enjoyment.** Provided that **LESSEE** faithfully performs all duties of **LESSEE** hereunder and complies with all term and conditions of this **LEASE**, **LESSEE** shall not be disturbed by **LESSOR** in its quiet enjoyment of the Premises, subject to the terms, conditions and provisions of this **LEASE**.

35. **Act of God.** In the event that the citrus trees or sugar cane crops, citrus crops or any other crops located on the Premises are damaged or destroyed due to any hailstorm, tornado, hurricane, flood, fire, or other act of god or any strike, civil disturbance or act of war or terrorism or due to citrus canker or other diseases or parasites, neither **LESSOR** nor **LESSEE** shall have any responsibility or obligation to repair or replace such citrus trees, sugar or citrus crops or to compensate each other or any other Party for the loss thereof.

36. **Condemnation:** Notwithstanding anything to the contrary contained in this **LEASE**, the following shall apply in the event of a taking, condemnation, or transfer in lieu thereof, of the whole or part of the Premises.

A. Total Taking. In the event the entire Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation, this **LEASE** shall automatically terminate upon transfer of title. Rent payments shall then be apportioned to the date of such taking or transfer of title. Except for any separate award applicable solely to **LESSEE**'s business, **LESSEE** shall not be entitled to an

apportionment of any award or payment applicable to the Premises, all of which shall be paid to **LESSOR**. Notwithstanding the foregoing, in the event that **LESSOR** is entitled to possession of the Premises after transfer of title, this **LEASE** shall continue during such extended possession pursuant to the terms hereof.

B. Partial Taking. In the event of a taking or condemnation of only a portion of the Premises or any other portion of the Premises is taken or condemned, or transferred or purchased in lieu thereof, by any governmental authority or other entity with the power of condemnation and such taking (i) in **LESSOR's** reasonable determination reduces the value of the Premises by fifty percent (50%) or more, (ii) in **LESSEE**'s reasonable determination, renders the Premises uneconomically feasible to operate or (iii) prevents, and would prevent after reasonable repair and reconstruction efforts by **LESSEE**, use of the Premises for its Permitted Uses under applicable law or regulations (including without limitation with respect to required access), then either **LESSOR** or **LESSEE** may terminate this **LEASE** effective upon the date of such taking or transfer of title. If neither **LESSOR** or **LESSEE** terminate this **LEASE** in such event, or in the event of a lesser taking or condemnation, then this **LEASE** shall continue with respect to all portions of the Premises or personalty not taken, condemned, sold, or transferred and, as applicable, the Rent due under this **LEASE** shall be equitably adjusted, if applicable, to account for the loss of the portion of the Premises taken. **LESSEE** shall not be entitled to an apportionment of any award or payment applicable to the Premises, all of which shall be paid to **LESSOR.**

C. **Condemnation Awards; Damages.** The Parties hereto agree to cooperate in applying for and in prosecuting any claim for any taking regarding the Premises or any portion thereof and further agree that condemnation awards or damages shall be allocated as follows:

(1) **LESSOR** shall be entitled to the entire award for the condemned Premises or any portion thereof and **LESSEE** shall have no rights to an apportionment of such an award or payment, provided, that, if applicable, **LESSOR** shall make portions of the award available for restoration purposes.

(2) **LESSEE** shall be entitled to make any available separate claim and recover any award thereon for any damages to **LESSEE**'s business operations under any available legal remedy, including but not limited to a claim for business damages, that may be allowable under applicable law. **LESSOR** shall have no rights to an apportionment of such an award or payment.

D. **Non-Affected Premises.** Notwithstanding any other provision of this **Paragraph 36**, any compensation for a temporary taking shall be payable to **LESSEE** without participation by **LESSOR**, except to the proportionate extent such temporary taking extends beyond the end of the Lease Term, and there shall be no abatement of Rent as a result of any temporary taking affecting any of the Premises.

37. **Joint and Several Liability:** The entities constituting **LESSEE** shall be jointly and severally liable for all obligations of **LESSEE** under this **LEASE.** A failure or default by any of the entities constituting **LESSEE** shall be deemed a failure or default by all of such **LESSEE** entities. Without limiting the foregoing, LESSEE agrees that Parent may act as the

representative of each other **LESSEE** and that **LESSOR** may deliver any notice to **LESSEE** to Parent on behalf of each **LESSEE** and rely on any notice given or other action or taken by Parent on behalf of **LESSEE**.

38. **Subordination and Nondisturbance:**

A. Subordination. Subject to the provisions of **subparagraph F.** below, this **LEASE** shall be subject and subordinate to any mortgage, deed of trust, trust indenture, assignment of leases or rents or both, or other instrument evidencing a security interest, which may now or hereafter affect any portion of the Premises, or be created as security for the repayment of any loan or any advance made pursuant to such an instrument or in connection with any sale-leaseback or other form of financing transaction and all renewals, extensions, supplements, consolidations, and other amendments, modifications, and replacements of any of the foregoing instruments ("Mortgage"), and to any ground lease or underlying lease of the Premises or any portion of the Premises whether presently or hereafter existing and all renewals, extensions, supplements, amendments, modifications, and replacements of any of such leases ("Superior Lease"). **LESSEE** shall, at the request of any successor-in-interest to **LESSOR** claiming by, through, or under any Mortgage or Superior Lease, attorn to such person or entity as described below. The foregoing provisions of this **subparagraph A.** shall be self-operative and no further instrument of subordination shall be required to make the interest of any lessor under a Superior Lease (a "Superior Lessor") or any mortgagee, trustee or other holder of or beneficiary under a Mortgage (a "Mortgagee") superior to the interest of **LESSEE** hereunder; provided, however, **LESSEE** shall execute and deliver promptly any certificate or instrument, in recordable form, that **LESSOR**, any Superior Lessor or Mortgagee may reasonably request in confirmation of such subordination.

B. **Rights of Superior Lessor or Mortgagee.** Any Superior Lessor or Mortgagee may elect that this **LEASE** shall have priority over the Superior Lease or Mortgage that it holds and, upon notification to **LESSOR** by such Superior Lessor or Mortgagee, this **LEASE** shall be deemed to have priority over such Superior Lease or Mortgage, whether this **LEASE** is dated prior to or subsequent to the date of such Superior Lease or Mortgage.

C. **Attornment.** If at any time prior to the expiration of the term of this **LEASE**, any Superior Lease shall terminate or be terminated by reason of a default by **LESSOR** as tenant thereunder or any Mortgagee comes into possession of the Premises or the estate created by any Superior Lease by receiver or otherwise, **LESSEE** shall, at the election and upon the demand of any owner of the Premises, or of the Superior Lessor, or of any Mortgagee-in-possession of the Premises, attorn, from time to time, to any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** as a result of any such termination, or as a result of a foreclosure of the Mortgage or the granting of a deed in lieu of foreclosure, upon the then terms and conditions of this **LEASE**, for the remainder of the term. In addition, in no event shall any such owner, Superior Lessor or Mortgagee, or any person or entity acquiring the interest of **LESSOR** be bound by (i) any payment of Rent or Additional Rent for more than one (1) rental payment in advance, or (ii) any security deposit or the like not actually received by such successor, or (iii) any amendment or modification in this **LEASE** made without the consent of the applicable Superior Lessor or Mortgagee, or (iv) any construction obligation, free rent (other than as provided in this **LEASE**), or other **LESSOR** concession (other than as

provided in this **LEASE**), payment obligation or monetary allowance (other than as provided in this **LEASE**), or (v) any set-off, counterclaim, or the like otherwise available against any prior landlord (including **LESSOR**), or (vi) any act or omission of any prior landlord (including **LESSOR**.

D. **Rights Accruing Automatically.** The provisions of this Paragraph shall inure to the benefit of any such successor-in-interest to **LESSOR**, shall apply and shall be self-operative upon any such demand, and no further instrument shall be required to give effect to such provisions. **LESSEE**, however, upon demand of any such successor-in-interest to **LESSOR**, shall execute, from time to time, instruments in confirmation of the foregoing provisions of this Paragraph, reasonably satisfactory to any such successor-in-interest to **LESSOR**, acknowledging such attornment and setting forth the terms and conditions of its tenancy.

E. **Limitation on Rights of Tenant.** As long as any Superior Lease or Mortgage shall exist, **LESSEE** shall not seek to terminate this **LEASE** by reason of any act or omission of **LESSOR** until **LESSEE** shall have given written notice of such act or omission to all Superior Lessors and Mortgagees at such addresses as shall have been furnished to **LESSEE** by such Superior Lessors and Mortgagees and, if any such Superior Lessor or Mortgagee, as the case may be, shall have notified **LESSEE** within ten (10) business days following receipt of such notice of its intention to remedy such act or omission, until a reasonable period of time shall have elapsed following the giving of such notice (but not to exceed sixty (60) days), during which period such Superior Lessors and Mortgagees shall have the right, but not the obligation, to remedy such act or omission. The foregoing shall not, however, be deemed to impose upon **LESSOR** any obligations not otherwise expressly set forth in this **LEASE**.

F. **SNDA.** Notwithstanding anything to the contrary contained in this Paragraph, **LESSOR** shall obtain on the Commencement Date and thereafter shall maintain for the benefit of **LESSEE**, a Subordination, Non-Disturbance and Attornment Agreement ("SNDA") from each and every Mortgagee and Superior Lessor to which this **LEASE** shall be subordinate, such SNDA to be in a commercially reasonable form and content for any financing or refinancing relating to the Premises, including the original issuance or refinancing of the Certificates of Participation reasonably acceptable to **LESSEE** and the applicable Mortgagee and Superior Lessor. The subordination of this **LEASE** by **LESSEE** provided in **subparagraph A.** hereof is conditioned upon and subject to the execution and delivery of the SNDA described herein, which shall allow **LESSEE** to remain in possession of the Premises provided that a Default has not then occurred, subject to the terms and conditions of this **LEASE** and the SNDA as negotiated and agreed among **LESSEE**, the applicable Mortgagee and Superior Lessor.

39. **Right of First Refusal:**

A. Offer to Lease Premises. As to any proposed or solicited agricultural leases for all or any portion of the Premises which the **LESSOR** intends to accept or enter into (the "Proposed Lease") that would provide for commencement within one (1) year following the Expiration Date (the "ROFR Period"), so long as no Default then exists under this **LEASE**, the **LESSOR** shall deliver a copy of such Proposed Lease to the Parent and **LESSEE** shall have a right of first refusal ("ROFR") to lease the Premises from **LESSOR** on terms and conditions not

less favorable to the **LESSOR** than those set forth in the Proposed Lease. The ROFR shall not apply to any proposed or solicited leases that are for uses other than agricultural uses.

B. Exercise of Right. If the **LESSEE** desires to lease the applicable portion of the Premises from **LESSOR** on the terms and conditions set forth in any Proposed Lease, **LESSEE** shall deliver a written notice of its election to the **LESSOR** within forty (40) Calendar Days of the date of receipt of the copy of the Proposed Lease by the Parent.

C. Termination of the Right of First Refusal. The ROFR shall expire, terminate and be of no further force and effect on the earliest of (i) the one year anniversary of the Expiration Date, (ii) the Expiration Date if the **LEASE** is terminated as a result of a Default by **LESSEE**, (iii) the date **LESSEE** fails to timely deliver its election as prescribed in **Paragraph 39.B** above or (iv) the date **LESSEE** fails to enter into a lease agreement consistent with the terms and conditions set forth in the Proposed Lease after electing to do so.

[REMAINDER OF PAGE INTENTIONALLY BLANK – SIGNATURE PAGE(S) FOLLOW]

The Parties or their duly authorized representatives hereby execute this **LEASE** on the date written below by each Party's signature.

LESSOR:

SOUTH FLORIDA WATER MANAGEMENT DISTRICT, BY ITS GOVERNING BOARD

Witness: _____

By: _____
Name: _____
As its: _____

Witness _____

Date of Execution _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____ of the South Florida Water Management District, a public corporation of the State of Florida, on behalf of the corporation, who is personally known to me.

_____
Notary Public

_____
Print

My Commission Expires: _____

LESSEE:

UNITED STATES SUGAR CORPORATION, a Delaware corporation

Witness: _____

By: _____
Name: _____
As its: _____

Witness _____

Date of Execution _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, the _____ of United States Sugar

Corporation, a Delaware corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

_____
Notary Public

_____
Print

My Commission Expires: _____

LESSEE:

SOUTHERN GARDENS GROVES CORPORATION, a Florida corporation

Witness: _____ By: _____
Name: _____
As its: _____

Witness _____ Date of Execution _____

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 200_ by _____, the _____ of Southern Gardens Groves Corporation, a Florida corporation, on behalf of the corporation who is personally known to me or has produced _____ as identification.

_____
Notary Public

_____
Print

My Commission Expires: _____

FINAL
5:15 1.13.94

AGREEMENT

The United States of America ("U.S.") and the undersigned agricultural parties ("Agricultural Parties") agree as follows:

1. The Agricultural Parties will establish a special account to implement the terms and conditions of this Agreement, such account to be subject to the review and approval of the Secretary of the Interior ("Secretary"). Each Agricultural Party will annually pay into the special account or to the South Florida Water Management District ("District"), as the case may be pursuant to paragraph 6 below, its proportionate share, based on acreage, of the payment contemplated by the provision entitled "The Agricultural Industry's Financial Commitment" in the Statement of Principles entered into in July 1993 ("Statement of Principles"). The payments for each year shall be made on or before December 31 of each year, beginning in 1994.

2. In addition to the 25% BMP requirement of the Works of the District Rule, each Agricultural Party will implement to the best of its ability the on-farm measures contemplated by the provision in the Statement of Principles entitled "Reduced Phosphorus Outputs Achieved Through Performance-Based Best Management Practices (BMPs)." Each Agricultural Party will be entitled to make the minimum payment for each year as set forth in this provision upon a reasonable demonstration, based on actual monitoring, that it has achieved an average phosphorus concentration in its farm discharges of 50 parts per billion (ppb). (The average will be calculated in the same manner as the average calculation applicable to STAs.) In the event an Agricultural Party does not achieve a discharge of 50 ppb of phosphorus, then that Agricultural Party will be entitled to a percentage reduction in the amount of the annual "base" payment based on EAA-wide performance as provided in the provision in the Statement of Principles referred to in this paragraph and Attachment 3 thereto ("Schedule of EAA Annual Payments and BMP Targets").

3. Each Agricultural Party, its agents, subsidiaries, and members of its corporate group shall withdraw from the litigation styled United States v. South Florida Water Management District, et al., pending in the United States District Court for the Southern District of Florida (Case No. 88-1886-CIV-Hoeveler) and all related litigation in all jurisdictions, including administrative challenges to the EAA SWIM Plan and permit, and will refrain from further funding such litigation either directly or indirectly, including through any dues, assessments, or contributions to any industry association, trade group, or like organization.

4. Unless an Agricultural Party fails to fulfill its obligations under paragraphs 1, 2, or 3 of this Agreement, that Party shall not be a defendant in any civil action brought by the United States or agencies thereof designed to meet "Phase I" or "Interim" standards for phosphorus concentrations in water, or to seek funding to construct a regional water treatment system to assist in meeting such obligations, until June 30, 2003. Thereafter, until June 30, 2008, to the extent that overall average phosphorus concentration in the discharge from the STAs exceeds 50 ppb, the United States will not assert monetary liability against that Party for the difference between the actual average concentrations in those discharges and 50 ppb. However, nothing in this agreement shall preclude the United States from asserting liability on the part of any Agricultural Party beginning July 1, 2003, for reduction of phosphorus from 50 ppb to whatever lower concentration is selected as the "Phase II" concentration standard if such standard has not been reached, or preclude the United States from asserting that liability may attach beginning July 1, 2008, for reducing phosphorus from actual concentrations to 50 ppb.

5. If authorized by amendment to State law, entry into this Agreement and performance of all obligations by the Agricultural Parties shall establish compliance with state water quality requirements in the Everglades Agricultural Area and Everglades Protection Area until December 31, 2006 for such Agricultural Parties. Notwithstanding the foregoing, nothing in this Agreement is intended to relieve any party of any requirement that may be imposed to protect human health and safety.

6. The payments referred to in paragraph 1 shall be made to the special account unless, by December 15, 1994, the District and the State of Florida Department of Environmental Protection ("State") have accepted the terms of this Agreement, in which event the annual payments shall be made to the District, to be used for construction of a regional water treatment system as described in the Settlement Agreement of July 26, 1991 or the Mediated Technical Plan of July 1993, as they may be revised. As long as the Agricultural Parties receive the benefit of water quality compliance and certainty of payment obligations established by this Agreement, this Agreement shall continue in effect between the United States and the Agricultural Parties; the Agricultural Parties shall continue to make payments to the special account or as otherwise provided herein; and the funds in the special account shall be expended by the Agricultural Parties as directed by the Secretary in his discretion first for treatment of water from farms in the EAA and second for Everglades restoration.

7. If the Florida Legislature or State legal entity under authority of the Legislature substitutes another method of payment applicable to Agricultural Parties and to be used for the

but # for lands

purposes provided in this agreement (i.e., the implementation of a regional water treatment system), then the taxes or assessments paid under the substitute method shall offset dollar for dollar the payments the Agricultural Parties are required to make under this Agreement.

8. The Agricultural Parties agree that they will, in good faith, join with the State in supporting revision by the Florida Legislature of the Marjory Stoneman Douglas Act, in order to clarify and expedite the institution of a system in which all agricultural parties are assessed their proportionate share of the payments referred to in paragraphs 1 and 2 above for meeting water quality standards and to establish compliance with state water quality requirements (in accordance with this Agreement) for the Agricultural Parties who accept this Agreement.

9. The Agricultural Parties agree that they will support state legislation providing authority to the EAA Everglades Protection District, based upon an affirmative vote of at least 70% of the acres represented in a landowner referendum, to raise the current total assessment ceiling to the total maximum annual payment amount set forth in the provisions described in paragraphs 1 and 2 above, and in the event such legislation is enacted will propose and affirmatively vote their shares in favor of an increased assessment in order to institute a system in which all agricultural interests are assessed payments that total such maximum payment amount (subject to reductions for on-farm treatment in excess of a 25% phosphorus reduction, as called for in the above-referenced provisions).

10. Waters from farm land in the EAA flow to Whitewater Bay and the Gulf of Mexico. The parties nevertheless recognize that Florida Bay, like the Everglades, is a natural resource of national and international importance. The parties will work, in good faith, to support legislation and public funding necessary to restore and preserve the natural values of Florida Bay.

11. The parties agree that prior to seeking judicial resolution of any dispute arising under this Agreement, they shall seek in good faith to resolve such dispute through mediation.

12. The parties will work together in good faith to seek to join all other agricultural parties to current litigation in this Agreement, and to expedite the final determination of all litigation and the construction of a regional treatment system as described in the Settlement Agreement of July 26, 1991, or the Mediated Technical Plan of July 1993, as they may be revised.

13. This Agreement, including those portions of the July 1993 Statement of Principles referred to above, constitutes the entire agreement between the parties and supersedes any prior

oral or written agreement between the United States and the Agricultural Parties. Nothing in this Agreement abrogates the authority of the United States under the Clean Water Act or any other federal law. Nothing in this Agreement affects the rights of any Party to this Agreement with respect to any party that is not a signatory to this Agreement.

This Agreement is dated January 13, 1994.

SIGNED:

For the United States:

_____ Date

For Accepting Agricultural Parties:

[signature] 13 Jan 1994

Flo-Sun Land Corporation,
by Donald W. Carson,
Executive Vice President

_____

_____

oral or written agreement between the United States and the Agricultural Parties. Nothing in this Agreement abrogates the authority of the United States under the Clean Water Act or any other federal law. Nothing in this Agreement affects the rights of any Party to this Agreement with respect to any party that is not a signatory to this Agreement.

This Agreement is dated January 13, 1994.

SIGNED:

For the United States:

1/13/94
Date

For accepting Agricultural Parties:

13 Jan 1994

Flo-Sun Land Corporation,
by Donald W. Carson,
Executive Vice President

STATEMENT OF PRINCIPLES

The Everglades is a wetland and wildlife resource unique in all the world. It has defined life in South Florida since humankind's introduction to the region. In acting to protect this important resource, we begin to define life for subsequent generations of Americans: what we choose to protect helps define us as a people.

In pursuit of human progress, South Florida has been ditched, diked, and drained for much of this century. By so doing, we have sought to provide a healthy, attractive living environment for millions of people safe from flooding and other natural forces; and to provide a base for a flourishing agricultural industry that provides important products, jobs, and income regionally and nationally.

But in the last decade we have come to realize the tremendous cost this alteration of natural systems has exacted on the region. This agreement will begin the renewal of the Everglades ecosystem, restoring natural flows of clean water. The result will benefit wildlife, urban drinking water supplies, and Florida Bay and other coastal waters and the life they sustain -- waters which are inextricably linked to the health of the Everglades themselves.

The Statement of Principles set out here is the basis on which the parties signing this agreement will seek a stay of pending litigation for 90 days, to reach a detailed settlement agreement resolving disputes that would otherwise continue for many years at enormous cost not just to the parties, but to the Everglades as well -- postponing the initiation of action to address critical threats to the system. Based on these principles, we will seek to include in the settlement discussions all parties to pending litigation who wish to contribute to the process.

We pledge more than a Plan; we pledge to provide the resources necessary for its successful implementation.

Moreover, we pledge to inaugurate an unprecedented new partnership, joining the Federal and State governments with the agricultural industry of South Florida, to restore natural values to the Everglades while also maintaining agriculture as part of a robust regional economy.

In addition, we will jointly conduct future scientific research on the ecological needs of the Everglades system and appropriate means to address those needs.

In so doing, we hope our efforts can become a national and international model for sustaining both the environment and the economy.

Management Principles

An End to Litigation.

In light of our commitment to implement these Principles, the parties to this Statement agree to join in motions to stay all Everglades litigation and administrative proceedings, including pending 298 District Administrative Litigation regarding Lake Okeechobee, for a period of 90 days, except for entry and access and the appeals pending before the Eleventh Circuit Court of Appeals.

This is necessary because, while this Statement signals a commitment to a process of mutual implementation of these Principles, it cannot and does not contain all provisions necessary for a comprehensive resolution of Everglades issues. We will use the 90-day period to resolve remaining issues and develop a complete settlement agreement.

A Commitment to Increasing Water Quantity to the Everglades.

A Technical Plan has been developed in intensive discussions over the past 120 days by experts from all sides. That Technical Plan addresses the improvement of water quality reaching the Everglades. It also commits to important steps in addressing pressing water quantity, sheet flow and other hydro-period restoration needs of the Everglades Ecosystem and of agricultural and other elements of South Florida's economy.

The parties recognize the need for continued availability of water for crops and will continue discussions on this issue over the next 90 days.

A Commitment to Implement a Detailed Technical Plan and A Specific Construction Schedule.

Implementation of the Technical Plan involves acquisition and establishment of flow-through filtration marshes, construction of works, and other activities. In structuring the construction schedule for the Plan, the parties intend to effect immediate reduction of phosphorus entering the Loxahatchee National Wildlife Refuge and portions of the Miccosukee Tribe of Indians of Florida lands. In addition, the Plan will enhance hydro-period restoration to the Everglades. Project construction will be scheduled to provide early delivery of treated water to those areas. *Attachment 1* provides a map of the Technical Plan.

The parties will commit to good faith, best efforts to build the project pursuant to the Technical Plan and the Construction Schedule to be agreed upon, unless all parties agree that new information or technological advances justify modifications.

Implementation of the Technical Plan is an important step in assuring long term protection for Everglades National park, as well as the Refuge, Reservation lands, and downstream waters. The parties believe that the Technical Plan, combined with the incentive plans described below for significantly-improved on-farm phosphorus reduction by industry, is the best way to move forward.

There are also public and resource benefits in the Water Conservation Areas resulting from sheet flow and other hydro-period improvements.

In short, this is right for the Everglades Ecosystem, as well as for the parties to the litigation. It is a good deal for the public, for the environment, and for the economy.

Reduced Phosphorous Outputs Achieved Through Performance-Based Best Management Practices (BMPs).

The Technical Plan calls for significant reductions of on-farm phosphorous outputs over the 20 year period. To achieve this goal, strong incentives for performance-based Best Management Practices (BMPs) will be established. The BMPs are based on performance, and they acknowledge and encourage development of new technologies that may more efficiently achieve these goals.

The 90-day period will be used, in part, to establish objective and fair methods for calculating the reductions of phosphorous output. Achievement will be evaluated on a rolling-average or similar system, so that industry has incentives for accelerated reduction. Appropriate credit will be supplied to industry in light of the normal annual rainfall variations and will take into account changes in water deliveries by the District that are not under the control of industry.

Financial Principles

A Shared Financial Commitment.

We contemplate that <u>all</u> parties will contribute financially to the implementation of the Technical Plan. In cases where legislation may be required to meet this commitment, those parties commit to seek and support such legislation. It is the sense of all signing parties that the financial terms outlined below and detailed in the attached achieve the objectives.

Attachment 2 outlines the contemplated percentage contributions of the agricultural industry, State, District and Federal Government.

To optimize the use of resources committed to this project, the parties will establish an engineering and construction collaborative process to be applied to its design, scheduling and construction.

The Agricultural Industry's Financial Commitment.

Agricultural interests in the Everglades Agricultural Area commit to the following (detailed in *Attachment 3*).

$322 million. The agricultural industry has agreed to pay up to $322 million over 20 years to fund construction, research, monitoring, operation and maintenance and other incidental costs as outlined in the Technical Plan. The contributions begin at $12.5 million per year, increase to $18.5 million in the 13th year, and continue to the 20th year.

Limited credits for phosphorous reductions. Credits against contributions will be granted for achieving targeted reductions of phosphorous. These levels fulfill specific goals of the Technical Plan. The first year goal is a 30% reduction; the goal for the thirteenth year, and thereafter, is a 45% reduction. In no case will the dollar contributions in any given year fall below $11.625 million. If the reductions in phosphorous through BMP's are not achieved, the reductions in payment will not be realized.

Secured payments. During the 90-day period, the method of securing payments from the agricultural industry will be defined and made enforceable, thereby ensuring a consistent flow of funds. A trust fund or like mechanism will be created to ensure that all funds contributed are actually used for the intended purposes.

The State of Florida's Financial Commitment

The Department of Environmental Protection will commit to its good faith, best efforts to pursue State funds from several sources during the construction period of the project, and the South Florida Water Management District will vote on an increase in the millage rate for ad valorem tax of .18 mil, generating approximately $ 21.8 million per year of cash flow which will be dedicated to Everglades restoration.

P 2000 Fund	$33 million
State Land Exchange Proceeds	$30 million
FPL Mitigation Fund	$14 million
SFWMD ad valorem tax	$21.8 million/year

A trust fund or like mechanism will be created to assure that additional tax receipts are actually used for Everglades restoration.

Federal Commitments.

The Federal government will commit to its good faith, best efforts to pursue the authorized C-51 flood control project and the measures designed to provide substantial amounts of water to the Everglades. The measures designed to provide additional water to the Everglades are included as part of the work effort identified as Item 22 in the Technical Plan. The first cost of the authorized C-51 flood control project, excluding the measures designed to provide additional water to the Everglades, is approximately $54 million. The first cost of the C-51 flood control project, modified to include measures to provide additional water to the Everglades, is approximately $167 million. The Department of the Army, Department of the Interior and the local sponsor propose to participate in this work in accordance with applicable law, appropriations, and administration policies.

Certainty and Enforceability

All parties must have a clear understanding and recognition of their rights and obligations, and of the process by which those rights and obligations will be determined now and in the future. For the federal government, achievement of the goals of the federal court settlement, including those set forth in both the Phase I and Phase II targets, has remained the touchstone of these discussions.

In return for substantial financial commitments and regulatory requirements, farm interests in the EAA seek to move forward with an assurance that their Everglades environmental responsibilities will be defined under the provisions of the final mediated agreement and under provisions of applicable law and administrative processes.

For the state parties enhancement of the total Everglades ecosystem is paramount, including the removal of phosphorous, correction of longstanding hydro-period problems and increasing the total quantity of water flowing through the system.

The foregoing principles will be the basis for settlement of all outstanding matters among the parties only upon consummation of the entire mediated agreement.

Instruments and procedures will be developed which make the provisions outlined above legally enforceable.

Complex issues must be addressed as the provisions for implementing these principles are defined. We believe that the foundation provided by the experience gained over the past few months in resolving the most difficult matters of design and funding, as part of an overall mediated resolution, provide assurance that additional matters will be satisfactorily resolved as well. To assist in these discussions, detailed briefings will be provided to the principals of the parties 30, 60, and 90 days from now.

SIGNED:

For the United States:

Secretary of the Interior — JUL 13 1993 — Date

Acting Assistant Secretary of the Army (Civil Works) — 7/14/93 — Date

For the South Florida Water Management District:

The obligations of the South Florida Water Management District will be through action of the Governing Board. The Statement of Principles will be presented to the Governing Board on July 15, 1993.

Valerie Boyd — 7/13/93 — Date

For the State of Florida,
Department of Environmental Protection:

Daniel H. Thompson — 13 July 1993 Date

For United States Sugar Corporation:

by: J. Kelley Fanlon — JUL 13 1993 Date

For South Bay Growers, Inc.:

by: J. Kelley Fanlon — JUL 13 1993 Date

For Flo-Sun Incorporated:

by: [signature] — JUL 14 1993 Date

1. Base payment corresponds to 25% BMPs.

2. Minimum payment requires achievement of target BMP percentage.

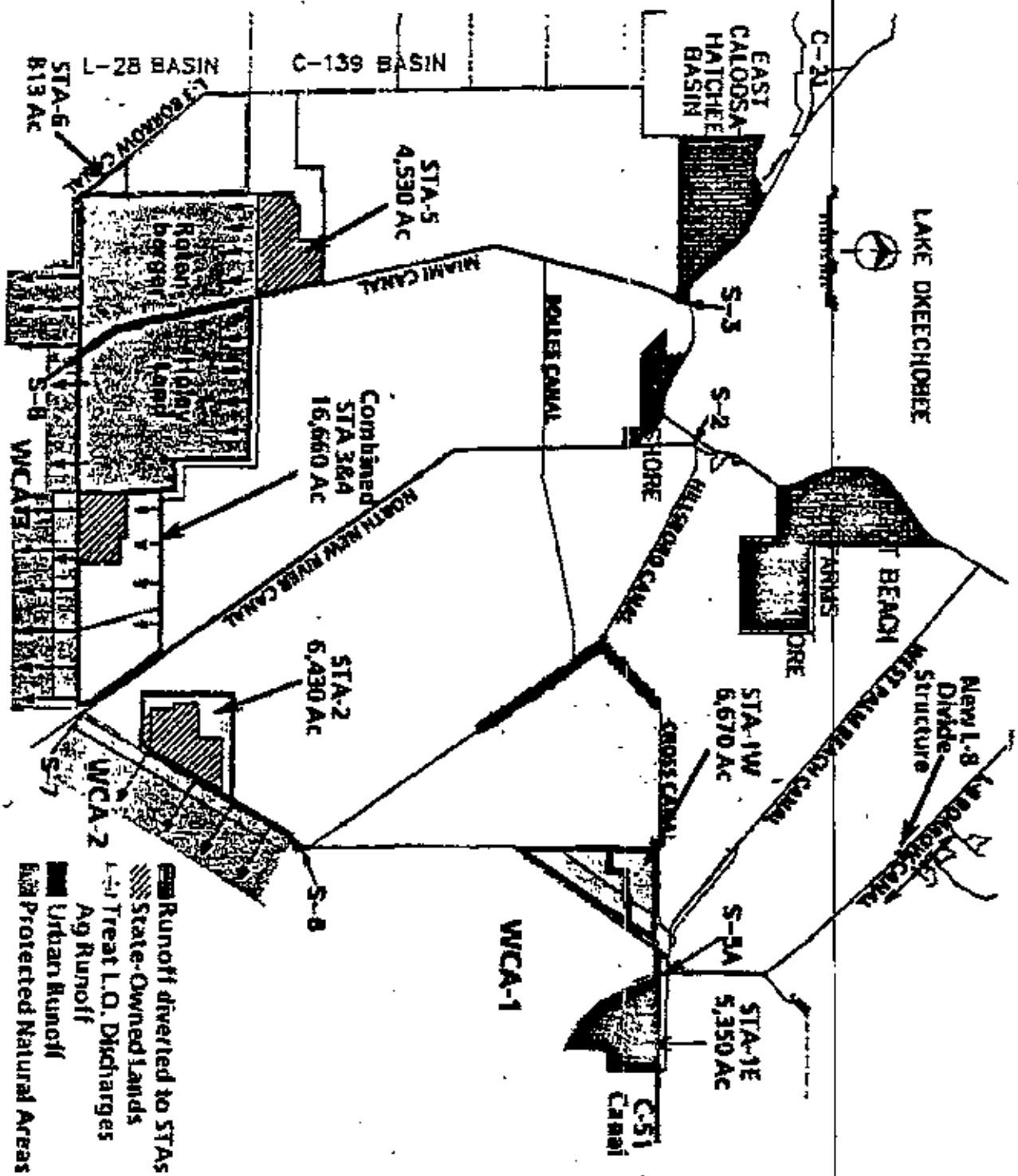
3. Credits will be given for all reductions in excess of the current regulatory requirement of a 25% reduction. The value of each 1% reduction beyond 25% will be as follows:

1994-1997	$175,000
1997-2001	$287,500
2001-2005	$325,000
2006-2013	$343,750

4. A rolling average over a multi-year period or similar system will be determined to give incentive for accelerated reductions above target levels. This is not intended to provide long term banking of credits.

5. If the BMP target is not achieved in any year, the value of each 1% incentive credit deficit shall be added to the minimum payment unless accumulated credits offset the deficit.

6. The methodology for measuring and determining BMP reductions for purposes of the EAA payment schedule shall be agreed upon as part of the final mediated agreement.


L-28 BASIN
C-139 BASIN
EAST CALOOSA HATCHEE BASIN
C-21
LAKE OKEECHOBEE
STA-6 813 Ac
STA-5 4,530 Ac
Rotenberger Tract
Holey Land
S-6
S-3
S-2
MIAMI CANAL
MOORE CANAL
Combined STA 3&4 16,660 Ac
NORTH NEW RIVER CANAL
HILLSBORO CANAL
HILLSBORO SHORE
PALM BEACH
WCA-3A
WCA-3B
STA-2 6,430 Ac
STA-1W 6,670 Ac
CROSS CANAL
WEST PALM BEACH CANAL
New L-8 Divide Structure
S-7
WCA-2
S-8
WCA-1
S-5A
STA-1E 5,350 Ac
C-51 Canal
Runoff diverted to STAs
State-Owned Lands
To Treat L.O. Discharges
Ag Runoff
Urban Runoff
Protected Natural Areas

Attachment 2

Sources of Funds

Minimum BMP's (25 %)

Attachment 3

Schedule of EAA Annual Payments and BMP Targets

Year	Base Payment M$	Minimum Payment M$	BMP Target %
1994	12.5	11.625	30%
1995	12.5	11.625	30%
1996	12.5	11.625	30%
1997	12.5	11.625	30%
1998	14.5	11.625	35%
1999	14.5	11.625	35%
2000	14.5	11.625	35%
2001	14.5	11.625	35%
2002	16.5	11.625	40%
2003	16.5	11.625	40%
2004	16.5	11.625	40%
2005	16.5	11.625	40%
2006	18.5	11.625	45%
2007	18.5	11.625	45%
2008	18.5	11.625	45%
2009	18.5	11.625	45%
2010	18.5	11.625	45%
2011	18.5	11.625	45%
2012	18.5	11.625	45%
2013	18.5	11.625	45%

BEFORE THE STATE OF FLORIDA
DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

Stormwater Treatment Area 2 (STA-2)
South Florida Water Management District
3301 Gun Club Road
West Palm Beach, Florida 33406

Administrative Order No.: AO-010-EV

NPDES Permit No. FL0177946-003-IW7A (MINOR)
EFA Permit No. 0126704-005-EM

ADMINISTRATIVE ORDER ESTABLISHING COMPLIANCE SCHEDULE PURSUANT TO SECTIONS 403.088(2)(f), F.S., 403.061(8) and 403.151, F.S.

I. STATUTORY AUTHORITY

The Department of Environmental Protection (Department) administers Florida's National Pollution Discharge Elimination System Program (NPDES) permitting and enforcement program under Sections 403.088 and 403.0885, Florida Statutes (F.S.), and Chapters 62-4, 62-302, 62-620, 62-650, and 62-660, Florida Administrative Code (F.A.C.). The Department also has permitting and enforcement authority in connection with the Everglades Construction Project (ECP) pursuant to Subsections (9) and (10) of the Everglades Forever Act (EFA), Section 373.4592, F.S. The Department has jurisdiction over the matters addressed in this Order. The Department issues this Order under the authority of Sections 403.088 and 403 F.S., as well as Subsections 373.4592(10) and (11)(a), 403.061(8), F.S., and Section 403.151, F.S.

The Department makes the following findings of fact.

II. FINDINGS OF FACT

1. It has been determined that Stormwater Treatment Area 2 (STA-2) will require a National Pollutant Discharge Elimination System (NPDES) Permit, pursuant to the State of Florida's federally approved NPDES program and Section 403.0885, F.S.

2. In 1994, the Florida Legislature passed the Everglades Forever Act (EFA), Section 373.4592, F.S. This landmark piece of legislation identifies the importance of the Everglades ecosystem, recognizes that the Everglades ecosystem is endangered as a result of adverse changes in water quality and in the quantity, distribution, and timing of flows, and mandates the implementation of the Everglades Construction Project (ECP) as an important component of Everglades restoration. EFA permits are required for the construction, operation, and maintenance of the ECP, pursuant to Subsection 373.4592(9) and (10), F.S.

3. STA-2 is a component of the ECP included in the Everglades restoration effort, pursuant to Subsection 373.4592(4), F.S.

4. The South Florida Water Management District (District) is the Local Sponsor of the Congressionally-mandated Central and Southern Florida Project for Flood Control and Other Purposes, and must operate STA-2 as necessary to fulfill its obligations as Local Sponsor, including but not limited to providing flood control and water supply throughout South Florida.

5. Subsection 373.4592(1), F.S., recognizes that waters flowing into the Everglades Protection Area contain excessive levels of phosphorus. The primary objective of the ECP is to reduce the levels of excess nutrients in the Everglades, in accordance with Subsections 373.4592(1)(d) and (g), F.S. This objective is also consistent with state anti-degradation requirements, which acknowledge excessive nutrients as one of the most severe water quality problems facing the state.

6. Based upon information from the Everglades Nutrient Removal (ENR) Project and performance data that has been collected to date from six existing STAs (*i.e.*, STA-1W, STA-1E, STA-2, STA-3/4, STA-5, STA-6), the STA-2 facility is likely to continue to produce substantial reductions in loads and concentrations of phosphorus being delivered to the Everglades Protection Area.

7. The Florida Legislature has defined Best Available Phosphorus Reduction Technology (BAPRT) as a combination of BMPs and STAs, including a continuing research and monitoring program, to reduce outflow concentrations of phosphorus so as to achieve the phosphorus criterion in the Everglades Protection Area (Subsection 373.4592(2)(a), F.S.). These phosphorus reductions are being achieved through the iterative adaptive implementation of the Everglades Protection Area Tributary Basins Long Term Plan for Achieving Water Quality Goals, October 27, 2003, (Long-Term Plan) and subsequent revisions. The Florida Legislature, in Subsection 373.4592(3)(b), F.S., has determined that the combination of BMPs and STAs contained within the Long-Term Plan constitutes the best available phosphorus reduction technology for achieving the phosphorus criterion in the Everglades Protection Area.

8. Pursuant to Subsection 373.4592(4)(e)2, F.S. the Department adopted a 10 parts per billion (ppb) numeric criterion for phosphorus in the Everglades Protection Area, which was approved by the U.S. EPA on January 24, 2005. The compliance methodology for determining achievement of the phosphorus numeric criterion was revised and adopted by the Department on May 5, 2005, and the revised rule (62-302.540 F.A.C.) was approved by the U.S. EPA on July 27, 2005.

   Although the NPDES and EFA permits for STA-2 (Permit No. FL0177946-003-IW7A and 0126704-005-EM) require compliance with the water quality standard for phosphorus, pursuant to Rule 62-302.540, Florida Administrative Code (F.A.C.), the STA-2 discharges may not be able to immediately achieve the permit effluent limit. This Order provides a reasonable period of time for the District to achieve compliance with the permit effluent limit.

9. The Long-Term Plan contains a planning objective of achieving compliance with the phosphorus criterion in the Everglades Protection Area. The October 27, 2003 version of the Long-Term Plan was subsequently revised to include further refinements to the recommended water quality improvement measures consistent with the iterative adaptive implementation process described in the plan. Post-2006 improvements, enhancements, and strategies, which will continue through 2016, are also included within the Long-Term Plan.

10. To address water quality standards and facilitate restoration of the Everglades ecosystem, the EFA, as amended in 2003, requires the Department and the District, by December 31, 2006, to take such action as may be necessary to implement the pre-2006 projects and strategies of the Long-Term Plan so that water delivered to the Everglades Protection Area achieves state water quality standards in all parts of the Everglades Protection Area. Post-2006 improvements, enhancements, and strategies, which will continue through 2016, are also included within the Long-Term Plan.

11. The improvements and enhancements in the Long-Term Plan include structural, operational and vegetation enhancements to STA-2. In accordance with approved revisions to the Long-Term Plan, a new Cell 4 has been constructed. Additional enhancements to STA-2 may occur as part of the adaptive implementation process envisioned in the Long-Term Plan.

12. STA-2 was initially constructed and has been operated to achieve a long-term flow weighted mean of 50 ppb, the Technology Based Effluent Limitation (TBEL) for which is set forth in Exhibit F (Nearhoof *et al*, 2005). Upon completion of the construction activities associated with the enhancements identified through the Long-Term Plan and approved by the Department, the facility shall complete the Stabilization Phase and enter the Routine Operations Phase. Performance projections for the Routine Operations phase indicate that the facility shall be capable of achieving a TBEL as set forth in Exhibit A (Goforth *et al.*, 2007), consistent with the iterative implementation of BAPRT. During the term of this Order, STA-2 will be assessed as to its progress toward achieving and maintaining the TBEL set forth in Exhibit A and the Water Quality Based Effluent Limitation (WQBEL), when promulgated.

13. Subsection 403.088(2)(e), F.S., states that if a discharge will not meet permit conditions or applicable statutes and rules, the Department may issue, renew, or reissue the operation permit if:

    a. The applicant is constructing, installing, or placing into operation, or has submitted plans and a reasonable schedule for constructing, installing, or placing into operation, an approved pollution abatement facility or alternative waste disposal system;

    b. The applicant needs permission to pollute the waters within the state for a period of time necessary to complete research, planning, construction, installation, or operation of an approved and acceptable pollution abatement facility or alternative waste disposal system;

    c. There is no present, reasonable, alternative means of disposing of the waste other than by discharging it into the waters of the state;

    d. The granting of an operation permit will be in the public interest; or

    e. The discharge will not be unreasonably destructive to the quality of the receiving waters.

    The Department finds that the proposed discharges from STA-2 meet all of the above-mentioned statutory criteria.

14. Based upon information submitted by the District, the operation and maintenance of the STA-2 project complies with the requirements of Section 403.088, F.S., as follows:

    a. The District has plans and a reasonable schedule for implementing BAPRT and collecting soil and water column phosphorus data to determine if the discharge is having an adverse impact on water quality.

    b. The District needs permission to discharge from the STA-2 facility in order to continue Everglades restoration and the removal of pollutants from the watershed, while it also continues to provide water to the Everglades Protection Area and to implement the Everglades research and monitoring program consistent with the overall water quality improvement strategies identified in the Process Development and Engineering (PDE) component of the Long-Term Plan.

    c. There is no present, reasonable, alternative means to this discharge, other than by discharging it into the waters of the state.

    d. The granting of this permit will be in the public interest, in accordance with Subsection 373.4592(9)(a), F.S., as the permitted facility is a treatment wetland that is expected to provide significant removal of phosphorus from the contributing basins; and,

    e. The granting of this permit will not allow discharge of waters unreasonably destructive to the quality of the receiving waters. In fact, since the facility is removing pollutants, including phosphorus, the discharges authorized by the accompanying NPDES and EFA permits permit are seen as beneficial to the quality of downstream waters.

15. The Department has determined that the improvements and enhancements to STA-2, the iterative adaptive implementation process of the Long-Term Plan, and the compliance process contained within this Order are the most environmentally appropriate and expeditious means of achieving compliance with the phosphorus criterion in the Everglades Protection Area. The Department has also determined that these activities provide the basis for a 10 year compliance schedule.

III. ORDER

Based on the foregoing findings of fact, **IT IS ORDERED,**

16. In Lieu of the annual average discharge limitation required under Condition I.A.5 in the NPDES Permit No FL0177946-003-IW7A, the permittee shall comply with the following reporting requirements and conditions as set forth in this Order.

17. This Order applies only to those discharges authorized by NPDES Permit FL0177946-003-IW7A and EFA Permit No. 0126704-005-EM. If any provision of this Order conflicts with the conditions in NPDES Permit FL0177946-003-IW7A or EFA Permit No. 0126704-005-EM, then the terms of this Order shall prevail for the duration of the Order.

Part I: Actions

18. The District shall continue to implement the activities pertaining to STA-2 identified in the Process Development and Engineering (PDE) component of the October 2003 Long-Term Plan. The permittee shall take such actions as are necessary, and which have been approved by the Department, to implement additional improvements, enhancements, and strategies identified through the PDE component of the Long-Term Plan that are relevant to STA-2 and that will further result in achieving the optimal performance of the facility. Any approved changes to the Long-Term Plan identified for implementation through the PDE component shall be reviewed to determine whether a revision to the permit(s) and/or this Order is required.

19. In accordance with the Long-Term Plan, as may be amended with Department approval, the District shall proceed with the planning, design and construction of additional regional water management projects and internal improvements and enhancements that, when fully implemented, shall result in the improved performance of STA-2 (See Table 1). These projects are described below:

    a. **STA-2 Internal Improvements and Enhancements.**

        Internal improvements and enhancements currently approved under the Long-Term Plan include:

            i. Construction of Cell 4 was completed under the previous STA-2 permits. It is assumed that the Start-up Phase will begin immediately upon cell inundation and that the Start-up test shall be achieved within 6 to 18 months. Upon achieving the Start-up test, Cell 4 would enter the Stabilization Phase. It is assumed that the Stabilization Phase for Cell 4 shall not extend beyond February 2011 or 24 months from achieving the Start-up test, whichever occurs first.

ii. It is anticipated that construction of the Cells 1 and 2 improvements and enhancements shall begin once Cell 4 has passed through the Stabilization Phase. Construction includes approximately 3.3 miles of interior levee; the subdivision of Cell 1 into Cells 1A and 1B; Cell 2 into Cells 2A and 2B; a forward-pumping station along the new interior Cell 2 levee to permit withdrawal from upstream emergent marsh cell to maintain stages in the downstream SAV cell; conversion of emergent vegetation to SAV in the downstream portions of Cells 1B and 2B; and herbicide treatment of Cells 1B and 2B (conversion of remaining emergent vegetation) for removal of emergent macrophyte vegetation to permit development of SAV. The currently approved improvements and enhancements for Cells 1 and 2 are scheduled to be flow-capable by December 31, 2012, in accordance with the Long-Term Plan. Upon completion of all of the internal improvements and enhancements associated with Cells 1and 2, it is assumed that the stabilization phase of the facility would last approximately 24 months and that the facility shall achieve the TBEL by no later than December 31, 2014.

b. **Regional Water Management Projects**

i. **Conveyance Improvements and Regional Treatment.** As a result of the findings from the Regional Feasibility Study the District is moving forward with the Everglades Agricultural Area Conveyance and Regional Treatment (ECART) Project, which is discussed below, to provide additional treatment areas and conveyance improvements within the EAA.

- Construction of approximately 3 miles of new canal connecting the West Palm Beach Canal to the Sam Senter Canal
- Expansion of approximately 37 miles of existing canals including the Sam Senter, Ocean, Hillsboro, Cross and North New River Canals
- Construction of 2 new water control structures, one in the West Palm Beach Canal and one in the Hillsboro Canal
- Land acquisition

ii. **Additional Treatment Area.** The District is presently designing capital works for approximately 6,800 acres of additional treatment area in Compartment B. This additional treatment area will provide treatment capacity for the North New River Canal basin that is presently treated in STA-3/4, and also provide treatment for a portion of the waters that presently are treated in STA-1W and STA-2. With the completion of the conveyance improvements described above, stormwater that presently enters STA-1W and STA-2 will be routed west to the North New River Canal for treatment in Compartment B, thereby decreasing the flows and loads entering these STAs. The current design for Compartment B anticipates the separation of Cell 4 from STA-2, bringing the total treatment area in Compartment B to over 8,700 acres, while returning STA-2 to its original treatment area size of 6,430 acres. The project will be completed in accordance with the deadlines in the Long-Term Plan. Due to vegetation grow-in and other factors, flow-through operations for the additional treatment area will likely not occur within the 5-year term of this permit.

The District shall report on the progress of the aforementioned projects, project schedule updates, and estimated timeframes for the implementation of future improvements and enhancements as part of the annual report requirements in Section I.E.7 of NPDES Permit FL0177946-003-IW7A and Specific Condition No. 29 of EFA Permit No. 0126704-005-EM.

Table 1. Schedule of Compliance Activities		
Activity		Completion Date
STA-2 Internal Improvements and Enhancements	Cell 4 Enters Stabilization[1]	February 2009
	Cell 4 Achieves Stabilization Test[1]	February 2011
	Cells 1 and 2 Improvements and Enhancements (Flow Capable)	December 2012
	Cell 1 and 2 Achieves Stabilization Test	December 2014
Regional Water Management Projects	Conveyance Improvements Completed	2011-2013
	Additional Treatment Area (Compartment B) Flow Capable	December 2013
	Compartment B Enters Stabilization	February 2015
	Compartment B Achieves Stabilization Test	December 2016

[1] See Paragraph 19a

20. The permittee shall conduct monthly monitoring for Total Phosphorus at a series of sites located along two transects downstream of the STA-2 discharge to characterize the effects of the STA-2 discharge on adjacent marsh areas of WCA-2 (Figure 3). Table 3 below identifies nine sampling sites. Of the nine sites, seven are located in areas currently identified as impacted (i.e., sediment TP concentration greater than 500 mg/kg), and two sites (C4 and CA 29) located in areas currently identified as unimpacted. Upon demonstration that an additional sampling site or removal of an existing sampling site is warranted, the permittee may request a modification to the monitoring program as appropriate. The Department shall review and approve such requests on a case by case basis. Any alteration in the monitoring program approved by the Department shall occur in the form of a modification to this Order.

Table 2: Transect Monitoring Locations

Transect 1			
SITE	LAT_DEC	LONG_DEC	Category
N.25	26.45398	-80.45649	Impacted
N1	26.44735	-80.45613	Impacted
N2	26.43897	-80.45402	Impacted[2]
N4	26.42263	-80.45038	Impacted
C4	26.39515	-80.46808	Unimpacted
Transect 2			
SITE	LAT_DEC	LONG_DEC	Category
FS0.25	26.34577	-80.52683	Impacted
FS1.0	26.34402	-80.51953	Impacted
FS3.0	26.33773	-80.50045	Impacted
CA 29	26.33036	-80.47837	Unimpacted

21. The District shall conduct a study to determine the relationship between discharges from the ECP components and resulting water quality in the Everglades Protection Area. The design and methodology for this study shall be incorporated into the Long-Term Plan and approved by the Department prior to initiating the study. Subsequent to Department review and approval, the District shall prepare and submit a report of its findings, based on the data collected, by no later than December 31, 2009. Based on the findings of the study and Department concurrence with its results, a WQBEL shall be established pursuant to 62-650 F.A.C., in order for the facility to achieve the phosphorus criterion set forth in 62-302.540 F.A.C.

[2] Transition site

22. In addition to the requirements in Section I.A.6 of the permit, the District shall provide an assessment of the inflow volumes and phosphorus loads during the year relative to the anticipated operational envelope in the technical document describing the derivation of the TBEL (Exhibit A, Goforth et al., 2007) as a part of the annual reporting conditions located in Section I.E.7 of the permit. If annual inflow volumes or phosphorus loads exceed the corresponding maximum values of the operational envelope during an annual compliance period and such an exceedance is determined to have caused or contributed to the facility's inability to achieve the effluent limitation, the District shall conduct a review of potential causes. The review shall include a comparison of the relationships between rainfall, runoff, and phosphorus loads from the compliance year with the rainfall/ runoff/ load relationships derived from the data used in deriving the TBEL.

Part II: Interim Discharge Limits

23. During the Routine and Stabilization phases discharges from STA-2 via the G-335 Pump Station shall meet TBELs based upon BAPRT. Compliance with the TBEL shall be as defined in Paragraph 24 below. During the Routine and Stabilization phases the STA shall be deemed in compliance if the TBEL is being achieved, in conjunction with all other applicable permit conditions not modified by this Order. During the Stabilization Phase, exceedances of the TBEL may occur; however, the STA shall be deemed in compliance with this Order and the permit, as long as the actions described in this condition and in Paragraph 19 of this Order are being taken in conjunction with all other applicable permit conditions not modified by this Order. The TBEL shall be revised as appropriate, consistent with the iterative implementation of BAPRT and consistent with 62-620.620(3), F.A.C., until such time that the TBEL becomes consistent with the permit limit established to achieve the phosphorus criterion in the Everglades Protection Area. The TBEL shall be reviewed subsequent to the completion of construction activities associated with each of the projects in Paragraph 19 of this Order. As part of this review process, the District shall make recommendations as to whether a TBEL revision is warranted based on improved performance of the STA and/or additional data.

A Stabilization Phase shall only occur as a result of the following; subsequent to a new cell or new flow-way achieving the start up test, the implementation of approved Long-Term Plan enhancements that may have adverse impacts on STA performance, a major storm event that compromises the structural integrity or performance of the STA, or planned/unplanned maintenance activities which would cause adverse impacts to the STA's treatment capabilities. If a flow-way is determined to be incapable of operating or performing effectively as a result of the impacts caused by one or more of these circumstances, the District shall submit strategies and timelines identified as being the most effective in restoring the impacted flow-way(s) to the optimal performance level within 60 days from such a determination or occurrence. The District's strategies and timelines shall be prepared in accordance with General Conditions 17 and/or 23 of NPDES Permit 0177946-003-IW7A. The timely submittal and implementation of these strategies and timelines in conjunction with the Department's review and approval of such submittals and compliance with all other applicable conditions set forth in NPDES Permit No.: 0177946-003-IW7A, EFA Permit No.:0126704-005-EM, and this Order shall constitute compliance.

In addition to the reporting associated with the planned changes and upset provisions of NPDES Permit No.: FL0177946-003-IW7A, the District shall also provide an annual assessment of the facility and the steps being taken to meet the TBEL as part of the reporting requirements in Section I.E.7 of the permit. As part of the first annual report following any adverse impact to the facility, and each subsequent year until the facility achieves the TBEL, the 12 month rolling flow-weighted mean TP concentration of the STA outflow shall be assessed as to whether there is a trend in improvement of performance relative to prior years. If the trend analysis that is applied to this data indicates that there is not a trend in improvement of performance, the permittee shall report as to the causes behind the lack of performance improvement. If during a subsequent annual report the trend analysis applied to these data indicate that there is not a trend in improvement of performance after the affected flow-way has been in flow-through operation for 24 months, the annual report shall include any remedial measures necessary to achieve improved facility performance by the end of next year, and shall provide an estimate of when the TBEL shall be achieved.

24. The TBEL described above will be applied as follows:

a. Compliance shall be tested in each water year (May – April) using data from the monitored representative inflow structures (S-6 and G-328) and outflow structure (G-335), except as noted below. The result of this compliance testing shall be reported by the District as part of the annual reporting requirements in Section I.E. Paragraph 7 of the NPDES permit FL0177946-003-IW7A. The compliance calculations will exclude flows made for low flow water supply deliveries. Low flow water supply deliveries are deliveries that pass through the Everglades Protection Area to Dade, Broward or Palm Beach County, and the Big Cypress Seminole Indian Reservation for water supply (wellfield recharge and salt water intrusion prevention) purposes. In addition, low flow water supply deliveries are made at times when water levels in the Water Conservation Areas (WCAs) are below the minimum elevations presented below:

- WCA-1 – 14.5 ft. NGVD measured at the 1-8C gauge
- WCA-2 – 10.5 ft. NGVD measured at the headwater (HW) of the S-11B structure
- WCA-3A – 7.5 ft. NGVD measured at HW of S-333 or 11.0 ft at HW of G-409

These stage thresholds will be reviewed as part of any future analyses associated with revisions to the current regulation schedules (WCA-1: May 1995; WCA-2: June 1989; WCA-3A: November 2000). This method will also exclude water supply deliveries to the Loxahatchee National Wildlife Refuge (Refuge) or Everglades National Park (ENP), which have been requested by Refuge, ENP or U.S. Army Corps of Engineers staff and which cannot be treated by an STA prior to delivery.

b. The TBEL shall not apply in water years when rainfall in the source basins tributary to the STA exceeds the maximum annual basin rainfall that occurred during the period of record used for deriving the TBEL (See Goforth et al., 2007). In addition, the TBEL shall not apply in water years when rainfall in the basin tributary to that STA is less than the minimum annual rainfall that occurred during the period of record used for deriving the TBEL for that STA if supplemental flows are not available to maintain wet conditions in that STA. If a year is excluded based upon these criteria, results from adjacent years shall be treated as consecutive in testing compliance.

c. The STA will be deemed in compliance unless the annual flow-weighted mean phosphorus concentration at the monitored outflows is greater than the annual limit. The annual limit can be calculated using the methods contained on pages 9-12 of the *Technical Support Document for the STA-2 TBEL* (Goforth *et. al*, 2007). The method may be revised in the future as appropriate to reflect lower STA limits. Tables 3 and 4 below contain example calculations of the TBEL based on corresponding phosphorus loading rates (PLR; see Goforth et al. for details on the interim performance periods).

Table 3. WY2006-2009 Interim Period 1 TBELs for STA-2 as a Function of PLR

Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb
1.051	30.4	1.500	32.5	1.900	34.5	2.350	36.9
1.100	30.6	1.550	32.8	1.950	34.8	2.400	37.1
1.150	30.8	1.600	33.0	2.000	35.1	2.450	37.4
1.200	31.1	1.650	33.3	2.050	35.3	2.500	37.6
1.250	31.3	1.665	33.4	2.100	35.6	2.550	37.9
1.300	31.6	1.700	33.5	2.150	35.8	2.600	38.2
1.350	31.8	1.750	33.8	2.200	36.1	2.650	38.4
1.400	32.1	1.800	34.0	2.250	36.3	2.700	38.7
1.450	32.3	1.850	34.3	2.300	36.6	2.736	38.9

Table 4. WY2006-2009 Interim Period 2 TBELs for STA-2 As A Function of PLR

Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb	Phosphorus Loading Rate $g/m^2/yr$	Annual Phosphorus Limit ppb
0.811	22.4	1.200	24.2	1.500	25.7	1.850	27.4
0.850	22.6	1.250	24.5	1.550	25.9	1.900	27.7
0.900	22.8	1.285	24.6	1.600	26.2	1.950	27.9
0.950	23.1	1.300	24.7	1.650	26.4	2.000	28.2
1.000	23.3	1.350	25.0	1.700	26.7	2.050	28.5
1.050	23.5	1.400	25.2	1.750	26.9	2.100	28.7
1.100	23.8	1.450	25.4	1.800	27.2	2.112	28.8
1.150	24.0						

Part III: Miscellaneous

25. The permittee shall maintain and operate STA-2 in compliance with the conditions of NPDES Permit FL0177946-003-IW7A and EFA Permit No. 0126704-005-EM, except as otherwise specified herein.

26. Departmental concurrence shall be obtained prior to initiating Lake Okeechobee regulatory or water supply releases that would result in an exceedance of the maximum levels of flow or phosphorus load contained in the STA operational envelope described in Exhibit A.

27. This Order does not operate as, or relieve the permittee of the need for a permit under Section 403.088, F.S. or under Subsection 373.4592(10), F.S.

28. This Order provides a reasonable period of time to come into compliance with the permit effluent limit necessary to ensure compliance with the new phosphorus criterion. This Order shall remain in effect until December 31, 2016.

29. The permittee shall notify the Department at the following address or via electronic correspondence within 48 hours of any non-compliance event. The notification shall provide detail on the occurrences leading to such an event and the measures taken to address the non-compliance.

Florida Department of Environmental Protection
Attn: John Hallas
2600 Blair Stone Road
Mail Station 3560
Tallahassee, FL. 32399-2400
(850) 245-8422
john.hallas@dep.state.fl.us

30. Discharges to the Everglades Protection Area from STA-2 that comply with the conditions of this Order, in addition to all other permit requirements, shall not be deemed to be in violation of water quality standards. Failure to comply with the requirements of this Order or the accompanying permit shall constitute a violation of this Order and may subject the permittee to enforcement action and/or penalties as provided in Section 403.161, F.S.

32. This Order is a final order of the Department pursuant to Section 120.52(7), F.S., and it is final and effective on the date filed with the Clerk of the Department unless a Petition for Administrative Hearing is filed in accordance with Chapter 120, F.S. Upon the timely filing of a petition this Order will not be effective until further order of the Department.

IV. NOTICE OF RIGHTS

A person whose substantial interests are affected by the Department's proposed permitting decision may petition for an administrative proceeding (hearing) under sections 120.569 and 120.57 of the Florida Statutes. The petition must contain the information set forth below and must be filed (received by the clerk) in the Office of General Counsel at 3900 Commonwealth Boulevard, Mail Station 35, Tallahassee, Florida 32399-3000.

Petitions by the applicant or any of the parties listed below must be filed within twenty-one days of receipt of this written notice. Petitions filed by any persons other than those entitled to written notice under Section 120.60(3) of the Florida Statutes must be filed within twenty-one days of publication of the notice or receipt of the written notice, whichever occurs first.

Under Subsection 120.60(3), of the Florida Statutes, however, any person who asked the Department for notice of agency action may file a petition within twenty-one days of receipt of such notice, regardless of the date of publication.

The petitioner shall mail a copy of the petition to the applicant at the address indicated above at the time of filing. The failure of any person to file a petition within the appropriate time period shall constitute a waiver of that person's right to request an administrative determination (hearing) under sections 120.569 and 120.57 of the Florida Statutes, or to intervene in this proceeding and participate as a party to it. Any subsequent intervention (in a proceeding initiated by another party) will be only at the discretion of the presiding officer upon the filing of a motion in compliance with rule 28-106.205 of the Florida Administrative Code.

A petition that disputes the material facts on which the Department's action is based must contain the following information:

a) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any; the Department case identification number and the county in which the subject matter or activity is located;
b) A statement of how and when each petitioner received notice of the Department action;
c) A statement of how each petitioner's substantial interests are affected by the Department action;
d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;
e) A concise statement of the ultimate facts alleged, as well as the rules and statutes which entitle the petitioner to relief; and
f) A statement of the relief sought by the petitioner, stating precisely the action that the petitioner wants the Department to take

A petition that does not dispute the material facts on which the Department's action is based shall state that no such facts are in dispute and otherwise shall contain the same information as set forth above, as required by Rule 28-106.301, F.A.C.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the Department's final action may be different from the position taken by it in this notice. Persons whose substantial interests will be affected by any such final decision of the Department have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation under Section 120.573, F.S., is not available for this proceeding.

This action is final and effective on the date filed with the Clerk of the Department unless a petition is filed in accordance with the above. Upon the timely filing of a petition this order will not be effective until further order of the Department.

Any party to this order has the right to seek judicial review of it under section 120.68 of the Florida Statutes, by filing a notice of appeal under rule 9.110 of the Florida Rules of Appellate Procedure with the clerk of the Department in the Office of General Counsel, Mail Station 35, 3900 Commonwealth Boulevard, Tallahassee, Florida 32399-3000, and by filing a copy of the notice of appeal accompanied by the applicable filing fees with the appropriate district court of appeal. The notice of appeal must be filed within thirty days after this order if filed with the clerk of the Department.

DONE AND ORDERED on this 4th day of September, 2007 in Tallahassee, Florida.

STATE OF FLORIDA DEPARTMENT
OF ENVIRONMENTAL PROTECTION

Michael W. Sole
Secretary

MS/jb/jh

FILING AND ACKNOWLEDGEMENT

Filed on this date, under section 120.52(11) of the F.S., with the designated Department Clerk, receipt of which is acknowledged.

Department Clerk — Date: 09/04/07

PARTIES REQUESTING NOTICE:
Miccosukee Tribe of Indians of Florida, c/o Dexter Lehtinen, Esq.
Miccosukee Tribe of Indians of Florida, c/o Kelly Brooks, Esq.
United States Sugar Corporation, c/o Bubba Wade
Seminole Tribe of Indians of Florida, c/o Stephen A. Walker, Esq.
Sugar Cane Growers Cooperative, Roth Farms, Inc., and Wedgeworth Farms, Inc., c/o William H. Green, Esq.
Keith Saxe, Esq., U. S. Department of Justice
Michael Stevens, U.S. Department of the Interior (fax)
Jeffrey J. Ward, Sugar Cane Growers Cooperative
Philip S. Parsons, Landers & Parsons
Helen Hickman, Brown & Caldwell
Tom MacVicar, MacVicar, Frederico, & Lamb
Charles Lee, Florida Audubon Society
Samuel B. Reiner, II, Esq., Lehtinen O' Donnell, Vargas & Reiner, P.A.
Michelle W. Smith, Esq., Earl, Blank, Cavanaugh & Stotts

COPIES FURNISHED TO:
Sharon Fauver, U.S. Fish and Wildlife Service
Susan Teel, U.S. Fish and Wildlife Service
Jeff Rielling, FL. Dept. of Community Affairs

Linda McCarthy, FL. Dept. of Agriculture
Charles Oravetz, Nat. Marine Fisheries Service
Don Klima, U.S. Advisory Council on Historic Preservation
John Childe, Friends of the Everglades
David Reiner, Friends of the Everglades
Col. Paul Grosskruger, USACOE, Jacksonville
Dennis Duke, USACOE, Jacksonville
Peter Bestrukschko, USACOE, Jacksonville
Eric Bush, USACOE, Jacksonville
Richard Harvey, USEPA, West Palm Beach
Philip Mancusi-Ungaro, Esq., USEPA, Atlanta
Roosevelt Childress, USEPA, Atlanta
Marshall Hyatt, USEPA Atlanta
Dan Scheidt, USEPA, Athens
Eric Hughes, USEPA, Jacksonville
Janet Bussell, The Everglades Foundation
Mike Waldon, Loxahatchee National Wildlife Refuge
Matt Harwell, Loxahatchee National Wildlife Refuge
Mike Zimmerman, Everglades National Park
Ken Haddad, Florida Fish and Wildlife Conservation Commission
Joe Walsh, Florida Fish and Wildlife Conservation Commission, Vero Beach

ADDITIONAL COPIES FURNISHED TO:
Eric Eikenberg, Governor's Office
Carol Wehle, SFWMD, West Palm Beach
Chip Merriam, SFWMD, West Palm Beach
Sheryl Wood, SFWMD, West Palm Beach
Terrie Bates, SFWMD, West Palm Beach
Ernie Barnett, SFWMD, West Palm Beach
Linda Lindstrom, SFWMD, West Palm Beach
Dean Powell, SFWMD, West Palm Beach
Sean Sculley, SFWMD, West Palm Beach
Susan Sylvester, SFWMD, West Palm Beach
Deb Drum, SFWMD, West Palm Beach
Gary Goforth, Gary Goforth, Inc., Stuart
Tracey Piccone, SFWMD, West Palm Beach
Tom Koster, SFWMD, West Palm Beach
Jim Galloway, SFWMD, West Palm Beach
Ron Bearzotti, SFWMD, West Palm Beach
Kirk Burns, Esq., SFWMD, West Palm Beach
John Mitnik, SFWMD, West Palm Beach
Maria Clemente, SFWMD, West Palm Beach
Delia Ivanoff, SFWMD, West Palm Beach
Kathy Pietro, SFWMD, West Palm Beach
Juliann LaRock, SFWMD, West Palm Beach
Linda Crean, SFWMD, West Palm Beach
Joe Albers, SFWMD, West Palm Beach
Hongying Zhao, SFWMD, West Palm Beach
Guy Germain, SFWMD, West Palm Beach
Joseph Jean-Jacques, SFWMD, West Palm Beach
Kevin Nicholas, SFWMD, West Palm Beach
Nicole Howard, SFWMD, West Palm Beach
Greg Knecht, FDEP, Tallahassee
John Outland, FDEP, Tallahassee

Frank Nearhoof, FDEP, Tallahassee
Shelley Yaun, FDEP, Tallahassee
Ernie Marks, FDEP, Tallahassee
Kenny Hayman, Esq., FDEP, Tallahassee
David Crowley, Esq., FDEP, Tallahassee
Tom Atkeson, FDEP, Tallahassee
William Kennedy, FDEP, West Palm Beach
Inger Hansen, FDEP, West Palm Beach